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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NELSON QUINTANILLA, ALEJANDRO AMAYA, ALEX AMIR
AREVALO, MAYNOR FAJARDO, WALTER GARCIA, JOSE L.
MARTINEZ, PRACELIS MENDEZ, OSMAR W. PAGOADA,
JAVIER QUINTANILLA, EDWIN RIVERA, CARLOS ESCALANTE,
KEVIN GALEANO, LERLY NOE RODRIGUEZ, JOSE VEGA
CASTILLO, JUAN QUINTEROS, and MARCUS TULIO
PEREZ,

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Plaintiffs,

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-against-

Case No:
09-CV-5331

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SUFFOLK PAVING CORP., SUFFOLK ASPHALT CORP.,
LOUIS VECCHIA, CHRISTOPHER VECCHIA,
HELENE VECCHIO, and JOHN DOES 1-5,

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Defendants.

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July 22, 2011
9:30 a.m.

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4875 Sunrise Highway
Bohemia, New York

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EXAMINATION BEFORE TRIAL of PRACELIS MENDEZ,

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one of the Plaintiffs herein, taken by the

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Defendants, pursuant to Article 31 of the Civil

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Practice Law and Rules of Testimony, and Notice

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and order, held at the above-mentioned time and

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place, before Karen LaMendola, a Professional

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Court Reporter and Notary Public of the State of

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New York.

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A P P E A R A N C E S:

ZABELL & ASSOCIATES, P.C.
Attorneys for Plaintiffs
4875 Sunrise Highway
Bohemia, New York 11716

BY: SAUL ZABELL, ESQ.

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501 Fifth Avenue
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BY: LAUREN GOLDBERG, ESQ.

ALSO PRESENT: Ernst P. A. Van Amson, Interpreter
Louis Vecchia
Jacqueline Sharp

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing, sealing
and certification be and the same are hereby
waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question shall be reserved to the time of
the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be
signed and sworn to before any officer
authorized to administer an oath, with the same
force and effect as if signed and sworn to
before the Court.

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2 ERNST P.A. VAN AMSON, the Spanish Interpreter
3 herein, was duly sworn to interpret the
4 questions from English into Spanish and
5 the answers from Spanish into English to
6 the best of his ability:

7 PRACELIS MENDEZ, the Witness herein, having been
8 duly sworn through the Interpreter, was
9 examined and testified as follows:

10 EXAMINATION BY

11 MR. ZABELL:

12 Q Would you please state your full
13 name for the record.

14 A Pracelis Mendez.

15 Q What is your current address?

16 A [REDACTED]
17 New York.

18 Q Mr. Mendez, good morning.

19 A Good morning.

20 Q How are you feeling today?

21 A Okay, for now.

22 Q I see that you speak some English?

23 A Not much, but I don't want to make
24 a mistake.

25 Q If you don't want to make a

1 P. Mendez

2 mistake, then what I'm going to require today is
3 that every question I ask you is interpreted by
4 the interpreter. He will interpret it into
5 Spanish, you will answer only in Spanish, and he
6 will then interpret your answer for me. This
7 way, we can ensure there are no mistakes.

8 Do you understand that?

9 A Yes.

10 MR. ZABELL: Could you give him
11 that statement.

12 THE INTERPRETER: Sure.

13 A Yes.

14 Q Do you understand that you're at a
15 deposition today?

16 A Yes.

17 Q And that you are required to
18 respond to the questions that I ask you, do you
19 understand that?

20 A Yes.

21 Q Do you understand that your
22 answers must be verbal?

23 A Yes, of course.

24 Q Do you understand that the court
25 reporter can't take down a nod of the head or a

1 P. Mendez

2 grunt of affirmances?

3 A Yes, I do.

4 Q If you do not understand a
5 question that I ask you, you have an obligation
6 to tell me you do not understand that question.

7 Do you understand that?

8 A Yes.

9 Q I noticed that you grunted,
10 um-hum, in response to one of those questions
11 right now.

12 Do you recall that?

13 A Yes, I do.

14 Q That is precisely the type of
15 response that the court reporter cannot take
16 down.

17 Do you understand that?

18 A Yes, I do.

19 Q Do you understand that if you
20 provide an answer to a question we ask you, it
21 will be assumed that you understood the
22 question?

23 A Yes.

24 Q You can take a break at any time
25 you like during this deposition. You just must

1 P. Mendez

2 notify us that you would like to take a break,
3 and you must answer any questions pending before
4 taking that break.

5 Do you understand that?

6 A Yes.

7 Q I see you're shaking your head in
8 affirmance when I'm asking the interpreter to
9 interpret questions for you.

10 What is your level of
11 understanding English?

12 A I haven't been to school to learn
13 English; a word here, or a word there, but I
14 need an interpreter to have a full understanding
15 of what is asked of me.

16 Q What is your date of birth,
17 Mr. Mendez?

18 A [REDACTED]

19 Q What is your nation of origin?

20 A El Salvador.

21 Q When did you come to the United
22 States from El Salvador?

23 A Approximately, in November '89.

24 Q How do you feel today?

25 A I'm good.

1 P. Mendez

2 Q Are you currently taking any
3 medications?

4 A No.

5 Q When was the last time that you
6 have drank any alcohol?

7 A For the past 42 years, I haven't
8 drank alcohol or smoked or anything.

9 Q When was the last time you saw a
10 doctor?

11 A Approximately, two years ago when
12 I went back to my country, and I got sick there.

13 Q When did you go back to your
14 country two years ago?

15 A Like in February.

16 Q February of what year?

17 A 2008 or 2009, I think.

18 Q For how long did you stay in your
19 country when you went back?

20 A Three weeks.

21 Q When did you return from your
22 country?

23 A The end of February, or the
24 beginning of March when I had to start work
25 again.

1 P. Mendez

2 Q How did you go from the United
3 States to El Salvador?

4 A By air.

5 Q Do you have a passport?

6 A Yes.

7 Q Did you provide a copy of that
8 passport to your attorney?

9 A Not yet.

10 Q Were you asked to provide a copy
11 of that passport to your attorney?

12 MS. GOLDBERG: Objection.

13 I'm going to instruct you not to
14 answer that question.

15 You're seeking attorney/client
16 privilege as to what went on between me
17 and my client, and I'm going to instruct
18 him not to answer the question.

19 Q Did you receive any documentation
20 from your attorney that asked for a copy of your
21 passport?

22 A I asked her. It seems that this
23 was not on the list. I don't know.

24 MR. ZABELL: I'm going to ask you
25 to provide a copy of your passport to

1 P. Mendez

2 your attorney.

3 Q Do you have any issue with that?

4 A No.

5 Q How quickly can you provide a copy
6 of your passport to your attorney?

7 A As soon as she says so, or as she
8 needs it.

9 MR. ZABELL: Counselor, you have
10 an interpreter here at your disposal.
11 I'm going to ask that you tell him to
12 provide a copy of his passport to you
13 immediately, and then I'll assume that
14 you'll copy it, and send it to me.

15 MS. GOLDBERG: We'll provide you a
16 copy of his passport.

17 MR. ZABELL: When?

18 MS. GOLDBERG: As soon as we can.

19 MR. ZABELL: In the next few days,
20 Counselor?

21 MS. GOLDBERG: If we can so locate
22 it; yes, in the next few days.

23 MR. ZABELL: Just note that I'm
24 going to be reserving the continuation of
25 this deposition until such time as I

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P. Mendez

receive that and determine whether or not I need some additional follow-up questions as a result of not being provided with a copy of the passport in advance of this deposition.

MS. GOLDBERG: I'm not even sure that you requested a copy of his passport prior to today. You requested documentation regarding his work eligibility --

MR. ZABELL: Counselor --

MS. GOLDBERG: -- and we objected to your request.

MR. ZABELL: Counselor --

MS. GOLDBERG: You did not pursue that any further.

MR. ZABELL: Counselor, your familiarity with what demands were made is of no consequence to me. You have my position.

MS. GOLDBERG: And you --

MR. ZABELL: There will be nothing further on the subject.

Q Mr. Mendez --

1 P. Mendez

2 MS. GOLDBERG: Just so you know,
3 we object.

4 We will provide you with a copy of
5 the passport. We were not notified that
6 you wanted a copy of the passport prior
7 to today.

8 There's no reason that the
9 continuation of this deposition should be
10 continued upon that.

11 MR. ZABELL: Counselor, this is
12 your first and final warning. When you
13 have an objection, you may object, you
14 may object to the form, or you may object
15 to the disclosure of attorney/client
16 confidential information. Anything
17 beyond that is unacceptable in this
18 forum. That is your first and final
19 warning.

20 If you'd like, I'd be more than
21 happy to give you five minutes and a
22 paralegal, so that you may go through the
23 rules to familiarize yourself with them,
24 but there will be no speaking objections
25 during my deposition.

1 P. Mendez

2 Do you understand?

3 MS. GOLDBERG: Mr. Zabell, please
4 proceed with the deposition.

5 If you feel the need to call a
6 judge, let's go call the judge.

7 MR. ZABELL: Do you understand?

8 MS. GOLDBERG: I stated my
9 objection on the record.

10 MR. ZABELL: It will be assumed by
11 the vacant stare in your eyes that you do
12 not understand, and that is why I have
13 explained it to you.

14 Again, the offer stands. If you
15 need five minute and a paralegal, I'd be
16 more than happy to provide you with the
17 rules.

18 Q Mr. Mendez, do you know why you're
19 here today?

20 A Yes.

21 Q Why do you believe you're here
22 today?

23 MS. GOLDBERG: Objection to form.

24 Q You may answer.

25 A To answer questions about what

1 P. Mendez

2 happened on the job, and I'm happy that he is
3 here.

4 THE INTERPRETER: He is pointing
5 to the person across this table.

6 Q Is that why you believe you're
7 here today?

8 MS. GOLDBERG: Objection to form.

9 Q You may answer.

10 A Yes.

11 Q Did you prepare in any way for
12 today's deposition?

13 MS. GOLDBERG: Objection to form.

14 A No, only waiting for today.

15 Q You did prepare for this
16 deposition while waiting for today; is that your
17 testimony?

18 MS. GOLDBERG: Objection to form.

19 A No, I haven't prepared for this
20 case. You know that they can call one at any
21 time.

22 Q How did you prepare?

23 MS. GOLDBERG: Objection to form.

24 A No, I haven't prepared. I don't
25 know what questions were going to be put to me.

1 P. Mendez

2 First, he said I was a good
3 worker, and I don't know now what's going to
4 happen to me.

5 Q Did you speak with your attorney
6 in advance of this deposition?

7 A No. She only gave me the date,
8 and that I should be here.

9 Q So if there are video cameras in
10 my hallway outside of my office, and they saw
11 you huddled in the corner with your attorney,
12 you weren't speaking about this case?

13 MS. GOLDBERG: Objection.

14 Q You may answer.

15 A No. All I told my lawyer is that
16 I was happy to see him here when I saw the
17 cameras because I also want to thank him for
18 giving me a job.

19 Thanks to that job, I was able to
20 pay my bills, take care of my family, take care
21 of my house, and I haven't had the opportunity
22 to thank him.

23 Q The video camera that I referenced
24 before indicated that you were meeting in the
25 corner of the hallway with your attorney before

1 P. Mendez

2 Mr. Vecchia came to the premises.

3 Are you aware of that?

4 MS. GOLDBERG: Objection.

5 Q You may answer.

6 A I entered with her. I didn't know
7 that he was here.

8 Q When you entered with your lawyer,
9 you didn't see Mr. Vecchia; is that correct?

10 A No.

11 Q Did you know if Mr. Vecchia was
12 here when you went into the corner of the
13 hallway to confer with your attorney?

14 MS. GOLDBERG: Objection.

15 Q You may answer.

16 A No.

17 Q When you met with your attorney in
18 the corner in the hallway, did you discuss
19 today's deposition?

20 MS. GOLDBERG: I'm going to
21 instruct you that you not answer.

22 That's attorney/client privilege.
23 He's absolutely not answering that
24 question.

25 MR. ZABELL: I'm not asking him

1 P. Mendez

2 what was discussed. I'm asking whether
3 or not he discussed today's deposition.
4 That's it.

5 MS. GOLDBERG: Regardless of what
6 was discussed, he's not entitled to
7 answer the question.

8 MR. ZABELL: Well, I'm entitled to
9 know whether or not this deposition was
10 discussed. The content of the
11 conversation, I'm not entitled to, and
12 you can so advise him of that. I have no
13 objection to that, but I am entitled to
14 know whether or not you discussed this,
15 and whether I get it from him or I get it
16 from you with a phone call to the judge,
17 I'm going to get that answer.

18 MS. GOLDBERG: I'm going to
19 instruct him not to answer that question.

20 MR. ZABELL: What is your basis?

21 MS. GOLDBERG: You're asking him
22 what was said between he and I.

23 MR. ZABELL: No. I'm sorry.

24 I'm going to repeat this again,
25 and I'm going to repeat it slowly for

1 P. Mendez

2 you.

3 I'm not asking him what was said.
4 I'm asking him whether or not he prepared
5 for this deposition when he was in the
6 hallway huddled in the corner with you.

7 MS. GOLDBERG: That's a separate
8 question. That's not what you asked him.

9 Read back the question. That's
10 not what you asked him.

11 MR. ZABELL: If you could ask him
12 this question --

13 MS. GOLDBERG: So is that other
14 question withdrawn?

15 Q When you were in the hallway
16 huddled with your attorney in the corner, did
17 you prepare in any way for this deposition?

18 MS. GOLDBERG: I'm going to
19 object, and ask him not to answer that
20 question.

21 MR. ZABELL: Then we're going to
22 call the judge.

23 MS. GOLDBERG: Call the judge.

24 I will instruct my client to
25 answer that question with a strict yes or

1 P. Mendez

2 no simply so that he knows he is not to
3 divulge any of the content of what was
4 said.

5 If you can answer the question in
6 a form that just involves a yes/no
7 answer, and you understand, Mr. Mendez,
8 that it's just a yes/no answer and not to
9 disclose the content, then you may answer
10 the question.

11 MR. ZABELL: If you can please ask
12 the witness the following question:
13 Based upon your lawyer's recent
14 capitulation, please answer the question
15 with a yes or no as to whether or not
16 when you were huddled in the corner with
17 your lawyer in the hallway, were you
18 preparing for this deposition?

19 MS. GOLDBERG: Mr Mendez --

20 Q Just answer yes or no.

21 A Yes.

22 Q Is that a si?

23 A Si, si, si; yes.

24 Q Mr. Mendez, why did you tell me
25 earlier that you did not prepare for this

1 P. Mendez

2 deposition in any way if you did, in fact,
3 prepare for the deposition by speaking with your
4 attorney?

5 MS. GOLDBERG: Objection.

6 MR. ZABELL: Please ask him.

7 A I did not discuss the deposition
8 with my lawyer.

9 I respect people. I saw my
10 lawyer, and I said good morning to her, and
11 that's all that happened.

12 Q So are you saying that you did not
13 prepare for this deposition by speaking to your
14 attorney this morning?

15 A I repeat, she just gave me the
16 address, and I still have it in my GPS. It took
17 me to Broadway, and I lost my way, and I finally
18 got there.

19 Q In the hallway in the corner, did
20 you have a conversation with your attorney?

21 Just answer it yes or no.

22 A I repeat what I said before. I
23 was happy that he was here; yes.

24 Q Do you know that you had that
25 conversation in the corner of the hallway before

1 P. Mendez

2 Mr. Vecchia appeared on the premises?

3 A I left once when I said that to
4 her.

5 Q Are you finished with your answer?

6 A Yes.

7 Q Mr. Mendez, you understand that
8 you're under oath here at this deposition; do
9 you not?

10 A Yes.

11 Q And you understand by being under
12 oath, you've sworn to tell the truth in this
13 matter?

14 A Yes.

15 Q And if you were to speak an
16 untruth at this deposition, it would have the
17 same effect as if you were to testify falsely in
18 court.

19 Do you understand that?

20 A Yes.

21 Q You testified before that you
22 wanted to thank Mr. Vecchia for providing you
23 with a job and for giving you the ability to
24 take of your family; is that correct?

25 A Yes.

1

P. Mendez

2

Q How many people are in your

3

family?

4

A It was seven, but now it's six.

5

Q My condolences. I'm sorry.

6

A Thank you, but that's a separate

7

issue, okay.

8

Q How many children do you have?

9

A Before it was five, but now it's

10

four and my wife.

11

Q How old are your children now?

12

A The first is 17-and-a-half years old.

13

My daughter will be 16 in October. My son

14

became eight years old this past June. My other

15

daughter was seven in December, and my last

16

child was two-years-old in June.

17

Q Do your children all live with

18

you?

19

A Yes, except the girl that became

20

eight years old who lives with her mother, but I

21

help.

22

Q Where do you currently reside?

23

A

24

25

Q For how long have you lived at

1

P. Mendez

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A From 2005.

4

Q Do you own that home at [REDACTED]

5

A Yes.

6

Q Where were you working at the time

7

you purchased that home?

8

A Suffolk Paving.

9

Q Did Lou Vecchia lend you any money

10

to assist you in purchasing that home?

11

MS. GOLDBERG: Objection.

12

Q You can answer. When she objects,

13

you can disregard her objections. She's noting

14

them for the record, and you can continue to

15

answer the question?

16

A Yes. Can I explain the rest of it?

17

Q There'll be time.

18

How much money did he lend you to

19

purchase that home?

20

A \$25,000.

21

Q Would you consider that a nice

22

thing?

23

MS. GOLDBERG: Objection.

24

Q You may answer.

25

A For that period of time, yes.

1 P. Mendez

2 Q Mr. Mendez, do you have any
3 documents that show that you paid Mr. Vecchia
4 back any of that \$25,000?

5 MS. GOLDBERG: Objection.

6 Q You may answer.

7 A I just have stubs, and I just have
8 his word against my word. When he gave me the
9 paper, it appeared to be something different
10 than what we agreed, and he explained that this
11 was all the doing of his accountant.

12 Q So the answer to my question is:
13 No, you have no documents that show you paid any
14 of that \$25,000 back to Mr. Vecchia; is that
15 correct?

16 MS. GOLDBERG: Objection.

17 He actually stated that he had --

18 MR. ZABELL: You stated your
19 objection, Counselor.

20 MS. GOLDBERG: He said that he had
21 stubs which he reiterated to you, so
22 you're misstating his testimony.

23 MR. ZABELL: Please ask him my
24 question.

25 A As I said, I have stubs, and the

1 P. Mendez

2 agreement was the following: On Saturdays, I
3 paid him --

4 THE INTERPRETER: I don't
5 understand the answer myself. Can I ask
6 him to restate it?

7 MR. ZABELL: Why don't you give us
8 the answer that he gave because there may
9 be some industry terms in there.

10 THE INTERPRETER: Okay. From what
11 I understand.

12 A I would work on a daily basis of
13 about \$325 -- I'm sorry; \$375 to \$400, and at
14 the end of the week on Saturdays -- on Fridays,
15 I would say to him to keep one day's wages --

16 THE INTERPRETER: He's correcting
17 me.

18 A I would say -- I would work two
19 days, and he would say to keep one day. If I
20 worked on Saturdays, I would say keep Saturday
21 and another day of the week.

22 Q Do you have any written proof of
23 that?

24 A I can look in my check stubs, and
25 I'm sure I have it.

1 P. Mendez

2 Q Did you provide all those check
3 stubs to your attorney?

4 A No.

5 Q Why not?

6 A As I said, I didn't know what was
7 going to happen. I didn't know what they were
8 going to ask me, so no, I didn't furnish those
9 stubs.

10 MS. GOLDBERG: I'd like to take a
11 five-minute break.

12 MR. ZABELL: Sure.

13 (Whereupon, a recess was taken at
14 this time.)

15 Q Mr. Mendez, is there a problem
16 with you continuing your testimony today?

17 A I'm okay, but when he mentioned my
18 sister, I felt a bit bad, but I will continue.

19 Q Do you want us to give you a few
20 minutes right now?

21 A Give me about ten minutes.

22 MR. ZABELL: Let's take ten
23 minutes.

24 (Whereupon, a recess was taken at
25 this time.)

1 P. Mendez

2 Q Mr. Mendez, are you ready to continue?

3 A Yes.

4 Q If you need to take a break, all
5 you need to do is let us know.

6 A That's good.

7 (A document was marked as
8 Defendants' Exhibit 1 for identification,
9 as of this date.)

10 Q I'm going to show you a document
11 that's been identified as Defendants' Exhibit 1.

12 If you could please take a look at
13 that.

14 A (Witness complies.)

15 Q Do you know what that document is?

16 A Yes.

17 Q What is that document?

18 A It's a check.

19 Q Is it a check that was given to
20 you?

21 A Yes.

22 Q What was the purpose of that
23 check?

24 A To make a down payment on the
25 house.

1 P. Mendez

2 Q Was it a loan for the purchase of
3 your home?

4 A Yes.

5 Q Who gave you that loan?

6 A Louie Vecchia.

7 Q I'm going to ask you to turn the
8 page of that document.

9 A (Witness complies.)

10 Q Is that your signature on that
11 second page?

12 A Yes.

13 Q That's the back of the check that
14 shows it was deposited into your bank account;
15 does it not?

16 MS. GOLDBERG: Objection.

17 A I don't remember that it was
18 deposited. I believe that I gave this to the
19 person of the mortgage.

20 Q But you did receive the \$25,000
21 loan from Louis Vecchia; did you not?

22 A Yes.

23 (A document was marked as
24 Defendants' Exhibit 2 for identification,
25 as of this date.)

1 P. Mendez

2 Q Thank you.

3 I'm going to show you a document
4 that's identified as Defendants' Exhibit 2, and
5 I ask you to take a look at that document,
6 please.

7 A (Witness complies.)

8 Q Do you know what that document is?

9 A Yes.

10 Q Now, the document is written in
11 English; is it not?

12 A Yes.

13 Q You understand enough English to
14 read that document; is that correct?

15 MS. GOLDBERG: Objection.

16 You can answer.

17 Q You may answer.

18 A Yes. As I stated before, when I
19 saw this paper, I went to his office because the
20 agreement was that I would pay between \$375 to
21 \$400 every week, but according to this document,
22 there's going to be monthly, and then he
23 explained to me that this was all the doing of
24 his accountant.

25 Q On Defendants' Exhibit 2, does it

1 P. Mendez

2 bear your signature?

3 A Yes.

4 Q At the time that you signed this
5 document, you had an opportunity to sign this
6 document; is that correct?

7 A Yes.

8 When I saw this paper, I went to
9 him and asked him why is this, and he said,
10 well, this is the doings of the accountant,
11 don't worry about it.

12 Q You understood it when you signed
13 it though; correct?

14 A Yes.

15 Q Do you have any checks indicating
16 a payment of \$777.77 that you made out to
17 Suffolk Paving to repay the loan?

18 A No.

19 Q Thank you.

20 Before we took that last break
21 that your attorney requested, I was asking you
22 if you had provided all your pay stub
23 information to your attorney.

24 Do you recall that question?

25 A Yes.

1 P. Mendez

2 Q Did you, in fact, provide all your
3 pay stubs to your attorney?

4 A Yes. There was a little error. I
5 did give her all the stubs, but in the corner, I
6 marked a day.

7 MR. INTERPRETER: I'll translate
8 exactly what I hear.

9 A No, but the dates were on the
10 stubs, but in the corner, there were numbers;
11 one or two.

12 Q Why did you write numbers one or
13 two on the stubs?

14 A When I gave him one day, I would
15 write the number one in the corner. If I gave
16 him two days, I would write the number two in
17 the corner.

18 Q You would write that after
19 receiving your paychecks; is that correct?

20 MS. GOLDBERG: Objection.

21 Q You may answer.

22 A When I went to his office to tell
23 him to take one day or two days.

24 Q Are you finished with that answer?

25 A Yes.

1 P. Mendez

2 Q How often did you get paid when
3 you worked for Suffolk Paving?

4 A Every Friday.

5 Q Did you always receive a paycheck
6 for the work that you performed?

7 A Yes.

8 Q Did you receive cash every Friday,
9 in addition to your paycheck?

10 A No. We had afterwards but no, no.

11 Q What does that mean, "we had
12 afterwards"?

13 A When I went to see him again, he
14 offered me \$300 by check, and \$25 in cash, but I
15 told him no.

16 Q When did that occur?

17 A In the beginning when I started in
18 2000 or 1998.

19 Q So you're saying you never
20 received cash payment from Suffolk Paving?

21 MS. GOLDBERG: Objection to form.

22 He didn't say that.

23 A No, but when I worked for friends
24 of his, they sometimes paid me in cash because
25 he told me that paying in check -- paying by

1 P. Mendez

2 check came out very expensive for him, but
3 sometimes his friends paid me less. That's why
4 I didn't like it. Yes, I did receive cash
5 payments.

6 Q Did you receive cash payments from
7 Louis Vecchia?

8 A Yes.

9 Q When did you receive cash payments
10 from Louis Vecchia?

11 A Sometimes he was late. In 2009,
12 he asked for my check, and he gave me cash.

13 Q How much cash did he give you?

14 MS. GOLDBERG: Objection.

15 A I believe he gave me \$1,200.

16 Q Was that just one occasion?

17 A Yes, that was one time when he
18 paid me the entire week.

19 Q Did he ever pay you partial weeks
20 in cash?

21 A No.

22 Q Is it fair to say in any given
23 week, you either received a paycheck or a cash
24 payment, but not both?

25 A Some nine times a year, he would

1 P. Mendez

2 give me -- from six to nine times a year, he
3 would give me \$200 in cash and the rest by
4 check.

5 Q Do you know why he did that?

6 MS. GOLDBERG: Objection.

7 You can answer.

8 A No.

9 Q You testified that there were
10 times that you would work for friends of
11 Mr. Vecchia; is that correct?

12 A Yes.

13 Q Who were some of these friends
14 that you worked for?

15 A Some I didn't know, but some I
16 knew a little, but he said that they were
17 friends of his.

18 Q And they paid you directly; is
19 that correct?

20 A Yes, but sometimes he would pay,
21 and then we had the union. It came out very
22 expensive.

23 Q When did you start working for
24 Suffolk Paving?

25 A I would say like in 2001; just

1 P. Mendez

2 about when the company started.

3 Q What month in 2001 did you start
4 working?

5 A It's difficult to say, but he
6 always started around March, the 1st or March
7 the 15th.

8 Q Do you know why he would start in
9 March; either the 1st or through the 15th?

10 A Because of the cold weather.
11 Sometimes he would stop around December 25 for
12 two months, and sometimes he would continue to
13 work.

14 Q Are you saying you can't do
15 asphalt and paving work in the cold?

16 MS. GOLDBERG: Objection.

17 It's also misstating his
18 characterization.

19 A When he had it, yes.

20 Q What does that mean?

21 A He sometimes got jobs in the cold
22 weather and he called.

23 Q He would call you if you were laid
24 off and call you back to work?

25 A Yes.

1 P. Mendez

2 Q Is that a yes or no?

3 A Yes.

4 Q So you would get laid off in the
5 cold months and called back when there was work.

6 Is that what your testimony is?

7 MS. GOLDBERG: Objection.

8 You can answer.

9 A Yes.

10 Q That was true for all the other
11 employees, as well; correct?

12 MS. GOLDBERG: Objection to form.

13 You can answer.

14 Q You can answer.

15 A Yes. There were two groups.

16 Sometimes he would call my group, and we would
17 start, and the other group would follow.

18 Q But both of those groups would get
19 laid off in the cold weather and get called back
20 when there was work; correct?

21 MS. GOLDBERG: Objection.

22 You can answer.

23 A In the majority, yes.

24 Q Were there times when you were
25 told that there was no work, but you could do

1 P. Mendez

2 private work yourself?

3 MS. GOLDBERG: Objection.

4 Q You can answer.

5 A Before, I would do a couple of
6 jobs privately, but I would let him know so that
7 he could know what was happening.

8 Q When you did those private jobs
9 privately, you would receive the pay for them;
10 correct?

11 A Yes, but not from friends of his.

12 Q You would do the work yourself,
13 and you would get paid yourself; correct?

14 A Yes, but those were friends of
15 mine that I would do a job for. It had nothing
16 to do with him.

17 Q Did you ever use any Suffolk
18 Paving equipment on those jobs?

19 MS. GOLDBERG: Objection to form.
20 You can answer.

21 A Yes, I will explain, I will
22 explain.

23 When I did one of those jobs, I
24 would ask him to borrow 550 equipment, and I
25 would pay him \$200 for that.

1 P. Mendez

2 Q You would use the pickup truck
3 that you drove to get to and from that job?

4 MS. GOLDBERG: Objection to form.

5 Q Yes or no?

6 A I have to explain.

7 Q Just answer yes or no right now.

8 A Yes.

9 Q When were you given a pickup truck
10 to use --

11 MS. GOLDBERG: Objection.

12 Q -- by Suffolk Paving?

13 A In '98.

14 In the beginning, he offered me
15 \$300 to pick up a cellular phone, a line. I
16 told him that I don't need the line, because I
17 always have my cellular phone with me, and I
18 didn't ask him for that.

19 Q But you accepted it?

20 A Yes.

21 Q So from 1998 on, you had a pickup
22 truck provided to you by Suffolk Paving; is that
23 correct?

24 MS. GOLDBERG: Objection to form.

25 You can answer.

1 P. Mendez

2 A Yes, but I always used it for work
3 for him. For my own work, I used my own pickup
4 because I have two pickups.

5 Q When did you get your own pickup
6 truck?

7 A 2005, I got my pickup.

8 Q From 1998 to 2005, you used the
9 Suffolk Paving pickup for all of your business
10 and personal work; correct?

11 A No, because I only used it for his
12 work; otherwise, I went to Home Depot and rented
13 a truck for \$20 which is a lot cheaper.

14 Q A lot cheaper than what?

15 A If I needed to move some to my
16 home, I would go to Home Depot and rent a truck
17 there, and that way, I avoided insurance
18 problems if I had an accident or something like
19 that.

20 Q Did you have an accident in any of
21 Suffolk Paving trucks?

22 A Yes.

23 Q What type of insurance problems
24 did you have?

25 MS. GOLDBERG: Objection to form.

1 P. Mendez

2 Q You can answer.

3 A I gave all the papers to his wife,
4 and after that, I don't know.

5 Q So it wasn't a problem at all.
6 You just had an accident, and you gave the
7 papers; correct?

8 MS. GOLDBERG: Objection to form.

9 A Yes.

10 Q Do you have receipts from
11 Home Depot for all these truck rentals that you
12 had?

13 A No, all they asked me was my
14 license, and I don't have any receipts.

15 Q Did they give you receipts?

16 A Yes, the cash register receipts.

17 Q And you destroyed those receipts?

18 MS. GOLDBERG: Objection to form.

19 Q You may answer.

20 A The majority, yes. I may have
21 them in my pickup. I may have them stuck
22 somewhere, but for three years now, I don't
23 know.

24 MR. ZABELL: I'm going to ask you
25 to look through all your documents to see

1 P. Mendez

2 if you have those receipts. If you do,
3 I'm going to ask you to provide them to
4 your attorney. Okay?

5 THE WITNESS: That's okay.

6 MR. ZABELL: Counsel, obviously,
7 I'm making a demand for those documents,
8 as well as any of the payroll documents
9 that he said he did not provide to you
10 that he should have. Okay?

11 MS. GOLDBERG: Okay.

12 Q Mr. Mendez, I'm a bit confused.
13 You said you started work for Suffolk Paving
14 in 2001.

15 Do you recall that?

16 A Yes.

17 Q But you said that you received a
18 vehicle, a pickup truck, from Suffolk Paving in
19 1998.

20 Can you explain that obvious
21 discrepancy?

22 A In 2001, he had a green pickup. I
23 remember that. At that time, he had a problem
24 with a partner. I don't quite understand the
25 name of the partner with whom he had problems,

1 P. Mendez

2 and that's what I remember.

3 Q But you had a vehicle in the
4 beginning of 1998; is that correct?

5 A Yes.

6 Q Even though you started working
7 for him in 2001?

8 MS. GOLDBERG: Objection to form.

9 A Yes, but I left his employment for
10 a year-and-a-half when he had problems with
11 Raffe Ranerio (phonetic).

12 Q When did you stop working for
13 Mr. Vecchia?

14 MS. GOLDBERG: Objection to form.

15 Q You can answer.

16 A I don't remember.

17 Q Mr. Mendez, do you know who you're
18 suing?

19 MS. GOLDBERG: Objection to form.

20 A Whom I'm suing?

21 Well, Suffolk Paving; right?
22 Suffolk Asphalt Corporation and the owner who is
23 Louie Vecchia.

24 Q Are those the only people you know
25 that you're suing?

1 P. Mendez

2 MS. GOLDBERG: Objection to form.

3 You can answer.

4 A I believe so.

5 Later when we had the union, I
6 received a check of Suffolk Paving, and I went
7 to him -- after we got the union.

8 THE INTERPRETER: Clarification.

9 A After we got the union, he placed
10 the name of another company, Suffolk Pavement,
11 in the name of his son.

12 THE INTERPRETER: Further
13 clarification.

14 A When I first got my checks, they
15 were issued by Suffolk Paving. Later, they
16 started coming in as checks of Suffolk Asphalt
17 Corporation in the name of his son.

18 I always went to the office when I
19 got these checks and asked for an explanation,
20 and he told me don't worry about it. It is
21 basically the same company in the name of my
22 son, but I'm the one who is in charge.

23 MS. GOLDBERG: Can I make a
24 recommendation?

25 MR. ZABELL: No.

1 P. Mendez

2 MS. GOLDBERG: When you --

3 MR. ZABELL: No.

4 MS. GOLDBERG: -- give an answer --

5 MR. ZABELL: No, you can't give a
6 recommendation.

7 MS. GOLDBERG: Listen, he's giving
8 many sentences at a time, and there is
9 getting to be confusion by the time the
10 translator actually has to give the
11 answer.

12 MR. ZABELL: I don't think there
13 is any confusion.

14 MS. GOLDBERG: It does seem to me
15 that there is confusion based on what
16 just occurred back and forth.

17 MR. ZABELL: I'm sorry you're
18 confused, but I think --

19 MS. GOLDBERG: For a more accurate
20 representation, I would suggest you
21 pause, let him translate some, continue
22 with your answer, and then let him
23 translate the rest because when you go
24 on, unfortunately, I think there's a
25 problem.

1 P. Mendez

2 Q Did you work for Suffolk Paving?

3 A Yes.

4 Q Did you work for Suffolk Asphalt?

5 MS. GOLDBERG: Objection to form.

6 You can answer.

7 A Yes.

8 Q Did you work for Louis Vecchia?

9 A Yes, he was my boss, and he was in
10 charge of everything.

11 Q Was Louis Vecchia fair to you?

12 MS. GOLDBERG: Objection to form.

13 A The first couple of years.

14 Afterwards, no.

15 Q What couple of years are you
16 referring to?

17 A Two or three years before I left,
18 but not that fair either because he didn't pay
19 me.

20 Q Didn't you really start having a
21 problem once you joined the union?

22 MS. GOLDBERG: Objection to form.

23 A No, the union had nothing to do
24 with it.

25 When he had no money, he was fair,

1 P. Mendez

2 but when he started getting more money, he
3 became less fair.

4 Q Do you file income tax returns?

5 A Yes.

6 Q Did you file an income tax return
7 for 2010?

8 A No.

9 MS. GOLDBERG: Objection.

10 I'm going to instruct you not to
11 answer the question.

12 MR. ZABELL: He already did.

13 THE WITNESS: No, what I say is --

14 MS. GOLDBERG: I'm instructing you
15 not to answer the question.

16 MR. ZABELL: He already did,
17 Counselor. You've got to be a little
18 quicker.

19 MS. GOLDBERG: Don't say anything
20 further. Wait for a question.

21 Q Did you file income tax returns in
22 the year 2009?

23 MS. GOLDBERG: Objection.

24 I'm going to instruct you not to
25 answer the question.

1 P. Mendez

2 MR. ZABELL: What's the basis?

3 MS. GOLDBERG: The basis is that
4 that is potentially just harassing this
5 plaintiff, and it potentially exposes him
6 to serious, adverse consequences, and it
7 has nothing to do with this case.

8 MR. ZABELL: That's not an
9 acceptable objection.

10 Again, Counselor, I will give you
11 time to review the Federal Rules as to
12 what is appropriate and what is not
13 appropriate. If you refuse to take that
14 time, I'm going to ask this question
15 again, and if you interfere with him
16 answering, we will call the Court.

17 MS. GOLDBERG: Let's take a
18 five-minute break.

19 MR. ZABELL: Would you like to talk
20 to me during this break?

21 MS. GOLDBERG: No, I would not
22 like to talk to you.

23 Five-minute break.

24 Q Mr. Mendez --

25 MS. GOLDBERG: No, no, no, no.

1 P. Mendez

2 Five-minute break. Let's go.

3 MR. ZABELL: Just note, Counselor,
4 if you talk to him about this deposition
5 during this break, I'm entitled to ask
6 him about what's discussed.

7 MS. GOLDBERG: You are?

8 MR. ZABELL: Yes.

9 MS. GOLDBERG: Isn't that what you
10 said to me during the deposition?

11 MR. ZABELL: Pardon me?

12 MS. GOLDBERG: Isn't that what you
13 said to me during the deposition?

14 (Whereupon, a recess was taken at
15 this time.)

16 MS. GOLDBERG: I'm going to
17 request that whole line of questioning
18 regarding Mr. Mendez's taxes be deemed
19 confidential as per the stipulation that
20 we have agreed to and are to be used
21 solely and only for the purposes of this
22 lawsuit.

23 MR. ZABELL: I will review the
24 testimony and the stipulation, but
25 there's a mechanism in place for

1 P. Mendez

2 addressing whether or not I agree with
3 the designation or not, and we'll notify
4 you in accordance with the stipulation.

5 MS. GOLDBERG: Okay.

6 Q Mr. Mendez, you said in 2010, you
7 did not file an income tax return.

8 Is that correct; yes or no?

9 A Yes, I did file taxes; yes.

10 Q Well, you just testified before
11 taking a break, that you did not file taxes.

12 Can you explain the discrepancy?

13 A You didn't let me finish. Yes.

14 Q Can you explain why you testified
15 before that you did not file 2010 income tax
16 returns, and now you're saying that you did
17 file 2010 income tax returns?

18 MS. GOLDBERG: Objection to form.

19 You can answer.

20 Q You can answer.

21 A I was probably too hasty in
22 answering the question, but I have all my taxes
23 in order.

24 Q Did you file 2009 tax returns?

25 A Yes.

1 P. Mendez

2 Q Did you file 2008 tax returns?

3 A Yes.

4 Q Did you file 2007 tax returns?

5 A Yes.

6 Q Going all the way back to 2001,
7 did you file tax returns for every year?

8 A While I was working, yes, and I
9 have all the records.

10 Q Were there years between 2001 and
11 now that you did not work and did not file an
12 income tax return?

13 A If I didn't work, I didn't make a
14 declaration. While I worked, I did.

15 Q Between 2001 and now, were there
16 years that you did not work?

17 A What can I say?

18 I don't know. All the years that
19 I have worked, I have reported.

20 Q Well, did you work in 2001?

21 A Yes.

22 Q Did you work in 2002?

23 A Yes.

24 Q Did you work in 2003?

25 A Yes.

1 P. Mendez

2 Q Did you work in 2004?

3 A That year, it seems like I didn't
4 work for him for a year-and-a-half, it seems.

5 Q Did you work for anybody in 2004;
6 yes or no?

7 A Yes.

8 Q Did you file income tax returns
9 in 2004?

10 A One year that I didn't work, I
11 didn't file income taxes, but I don't know which
12 year that was.

13 Q Did you work for someone other
14 than Mr. Vecchia during that year?

15 MS. GOLDBERG: Objection to form.

16 A I don't remember.

17 Q So you worked for somebody that
18 one year and did not file income tax returns; is
19 that your testimony?

20 MS. GOLDBERG: Objection to form.

21 I think you're mischaracterizing his
22 testimony.

23 Q You may answer.

24 A No. When I work, I report my
25 taxes, but when I don't work, I don't report my

1 P. Mendez

2 taxes. All my papers are okay.

3 Q Did you work in 2005?

4 A I'm inclined to say no. I don't
5 think I have. I may not have worked in 2004
6 or 2005.

7 Q Did you work in 2006?

8 A Yes, I worked. I'm sure I did.

9 Q Did you work in 2007?

10 A All these years until 2009, it's
11 correct; yes.

12 Q Did you work in 2008?

13 A Yes.

14 Q Did you work in 2009?

15 A Yes.

16 Q In the year 2009, did you ever
17 file for unemployment benefits?

18 A Yes.

19 Q In the year 2008, did you ever
20 file for unemployment benefits?

21 A Yes, what he allowed us. Depends;
22 two months, three months.

23 Q In the year 2007, did you ever
24 apply for unemployment benefits?

25 A There were a few years where I

1 P. Mendez

2 wasn't working, but I didn't call unemployment,
3 but my friends told me that I should because I
4 was entitled to it.

5 Q In 2007, did you ever apply for
6 unemployment benefits?

7 A I believe so, but I'm not quite
8 sure.

9 Q In 2006, did you ever apply for
10 unemployment benefits?

11 A It's the same question, but from
12 2007 on -- it may be 2006 on, I don't know.
13 Everything was in order from 2006 to 2007 on.

14 Q What does that mean that
15 "everything was in order"?

16 A What I mean is that the years
17 before, I didn't collect, but the other years, I
18 think I filed for benefits.

19 Q You only filed for benefits during
20 the periods of time that you were unemployment;
21 is that correct?

22 A Yes.

23 Q You would collect unemployment
24 benefits for two or three months out of the
25 year; is that correct?

1 P. Mendez

2 A Just about; yes.

3 Q That was every year; correct?

4 MS. GOLDBERG: Objection to form.

5 It's also a mischaracterization of
6 his testimony.

7 A When I started collecting, yes.

8 Q Your income tax returns from the
9 year 2001 to present, do you currently possess
10 them?

11 A I believe I do.

12 MR. ZABELL: I'm go to ask you
13 that you provide them to your attorney at
14 the conclusion of this deposition.

15 Q Do you understand that?

16 MS. GOLDBERG: I'm going to
17 instruct you not to answer.

18 We object to providing you with
19 his tax returns. If you feel the need to
20 compel them, you can make a motion to the
21 Court for those.

22 MR. ZABELL: Counsel, remember,
23 your role here is to sit there and remain
24 silent.

25 Q Did you understand my question?

1 P. Mendez

2 MS. GOLDBERG: You also cannot
3 order my clients to do anything. You can
4 make a request to me that we will respond
5 to --

6 MR. ZABELL: Counsel --

7 MS. GOLDBERG: -- but you cannot
8 order my clients to do anything.

9 MR. ZABELL: Counsel --

10 MS. GOLDBERG: You can make
11 requests --

12 MR. ZABELL: Counsel, remain
13 silent.

14 MS. GOLDBERG: -- and I will let
15 you know.

16 A I understand, and what she says.

17 Q Did you prepare your income tax
18 returns yourself, or did you use a service to
19 assist you?

20 A I used the services of another
21 person.

22 Q What is that other person that you
23 utilized?

24 A It's an accountant who does the
25 taxes.

1 P. Mendez

2 Q What is the name of that
3 accountant?

4 A I just know her name. I don't
5 know her last name.

6 Q What is her name?

7 A Olga.

8 Q Does Olga have a shop that she
9 works out of or an office?

10 A She has an office.

11 Q Where is her office located?

12 A It is located on Union Boulevard,
13 but I don't know the number.

14 Q Union Boulevard in what town?

15 A I believe it's in Bay Shore.

16 Q Did she prepare your taxes for all
17 of the years from 2001 forward?

18 A I have another person, but I don't
19 know. I started out with another person, but I
20 don't know.

21 Q When did the other person prepare
22 your taxes?

23 A I don't remember. I will have to
24 check the tax documents, or go to him and ask.

25 MR. ZABELL: I'm going to ask that

1 P. Mendez

2 you do that, and then relay that
3 information to your attorney, and we'll
4 make a spot open in the transcript, so
5 when you find that information out, you
6 can provide us with it.

7 (INSERT)_____.

8 THE WITNESS: Yes, I agree.

9 Q Mr. Mendez, over the past three
10 years, have you incurred any legal fees?

11 A In connection with what?

12 Q In connection with any lawsuits
13 that you're involved with.

14 A There was a misunderstanding with
15 my wife that had to do with child support, but I
16 think that everything is okay. Everything is
17 okay.

18 Q Your wife accused you of not
19 paying child support?

20 MS. GOLDBERG: Objection to form.

21 A No, she didn't. It was a
22 misunderstanding. Now everything is okay, but
23 she has always lived with me.

24 Q Were you being sued by your
25 ex-wife?

1 P. Mendez

2 A It's not my ex-wife. It's my
3 wife, and she has never filed a suit against me.

4 Q But you had to hire an attorney
5 for that purpose?

6 MS. GOLDBERG: Objection to form,
7 but he can answer.

8 A Yes.

9 Q Is that the only attorney that
10 you've hired in the past three years?

11 A Yes, and her (indicating).

12 Q You're being sued by Louis
13 Vecchia; are you not?

14 A Yes.

15 Q Do you know why you're being sued?

16 MS. GOLDBERG: Objection to form.

17 A I assume for the \$25,000.

18 Q Have you hired an attorney to
19 defend you in that claim?

20 A They didn't give me the papers, I
21 found the papers on the desk, and I delivered
22 them to them.

23 Q Who is the "them" that you're
24 referring to?

25 A To the lawyers I have at the

1 P. Mendez

2 present time.

3 Q Did you have to pay them anything
4 to represent you?

5 A No.

6 Q Have they told you that they are
7 going to charge you to represent you?

8 MS. GOLDBERG: Objection.

9 That's attorney/client privilege.
10 I'm instructing him not to answer.

11 MR. ZABELL: You put it in your
12 papers, Counselor, so you do not have a
13 choice here.

14 MS. GOLDBERG: What papers are you
15 referring to?

16 MR. ZABELL: In your actual
17 complaint.

18 You're looking at me confused, and
19 I really can't help you with that
20 confused look.

21 MS. GOLDBERG: Well, until you can
22 clarify, I'm instructing him not to
23 answer that question.

24 Q Have you been given a retainer for
25 Ms. Goldberg's representation of you in the

1 P. Mendez

2 lawsuit where you're being sued for \$25,000?

3 MS. GOLDBERG: Objection to form.

4 A A request for repeat of the
5 question.

6 Q Have you ever been advised that
7 you were going to have to pay Ms. Goldberg for
8 her representation of you in the lawsuit that
9 you are being sued for \$25,000?

10 MS. GOLDBERG: I'm going to
11 instruct you not to answer that question.

12 Again, you're soliciting
13 attorney/client privilege.

14 A I delivered the papers to the
15 lawyer and after to look into it, but nothing
16 else up to this point.

17 Q So you have not paid Ms. Goldberg
18 anything to represent you?

19 A No.

20 Q Have you ever received any legal
21 bill from Ms. Goldberg or Mr. Wallace for
22 representing you in the lawsuit in which you are
23 being sued for \$25,000 from Mr. Vecchia?

24 A No.

25 Q So if somebody has said that you

1 P. Mendez

2 incurred legal bills as a result of that
3 lawsuit, they would be lying; is that correct?

4 MS. GOLDBERG: Objection to form.

5 Q You may answer.

6 A As I said before, any papers that
7 I received, I would deliver to them.

8 Q But you have not received any
9 legal bills for Ms. Goldberg's representation
10 of you in that lawsuit; is that correct?

11 A No.

12 Q No, it is correct; or no, it is
13 not correct?

14 A No; bills, I didn't receive.

15 Q Did you pay Ms. Goldberg any money
16 to represent you in the lawsuit in which
17 Mr. Vecchia is suing you for \$25,000?

18 A No.

19 Q So if Ms. Goldberg said that she
20 has charged you money to represent you in that
21 lawsuit, she would be lying; is that is correct?

22 MS. GOLDBERG: Objection to form.

23 A I don't know if they were billing
24 me anything in the future. I don't know how
25 much, but up until now, no.

1 P. Mendez

2 Q Have you ever met Mr. Ian Wallace?

3 A Only to give him paperwork.

4 Q Has he ever charged you any money?

5 A That, I don't remember.

6 Q Do you remember giving him any
7 money?

8 A I don't remember that either.

9 Q So if he said that he has charged
10 you anything, he would be lying; is that
11 correct?

12 MS. GOLDBERG: Objection to form.
13 You can answer.

14 A What she says.

15 Q She didn't say anything. You have
16 to answer the question.

17 A I don't remember.

18 Q What don't you remember?

19 A I have only seen him a few times.

20 Q Do you remember paying him any
21 money?

22 A I don't remember.

23 Q Do you remember paying

24 Ms. Goldberg any money?

25 A No.

1 P. Mendez

2 Q Do you remember testifying just a
3 few minutes ago that you didn't pay anything in
4 legal fees?

5 THE INTERPRETER: I didn't
6 understand that answer. Can I ask him
7 again?

8 MR. ZABELL: Please.

9 A Yes, I remember that, but as I
10 said, I don't know if in the future, they're
11 going to charge me.

12 Q But from this point back, you have
13 not paid them anything; is that correct?

14 MS. GOLDBERG: Objection.

15 He's already answered this
16 question, and said he does not recall.

17 Q You can answer.

18 A I can't answer this right now. I
19 don't know.

20 Q You don't know if you've given
21 them any money?

22 MS. GOLDBERG: Objection.

23 You've asked him this five times
24 now. You're bordering on harassment.

25 Q You may answer.

1 P. Mendez

2 A I'm being asked the same question
3 five or six times and repeating the same thing,
4 and I'm getting confused.

5 Q We don't want to confuse you,
6 Mr. Mendez, but we must arrive at the truth
7 here.

8 From today, this day's date going
9 back, did you pay Ms. Goldberg or Mr. Wallace
10 any money?

11 MS. GOLDBERG: Objection.

12 This is the fifth time, I believe,
13 this question has been asked. He's
14 already answered it.

15 Q You may answer.

16 A My answer is I have given them all
17 the papers for both cases, and if I have to pay
18 them in the future, I will pay them.

19 Q Have you had to pay them anything
20 to date?

21 MS. GOLDBERG: Objection.

22 Asked and answered.

23 Q You may answer.

24 MS. GOLDBERG: How many times now?
25 He's told you what he remembers.

1 P. Mendez

2 MR. ZABELL: Counsel, no speaking
3 objections.

4 MS. GOLDBERG: How many times are
5 we going to go through the same question?

6 MR. ZABELL: Until we get an
7 answer.

8 MS. GOLDBERG: Well, you're going
9 to go until you get the answer you want;
10 that you like?

11 MR. ZABELL: Counselor, last
12 warning.

13 MS. GOLDBERG: Yes, and last time
14 for this question.

15 Q Answer the question.

16 A The same question. If they bill
17 me, I will pay.

18 Q Have you paid them anything yet?

19 MS. GOLDBERG: Objection.

20 Asked and answered eight times
21 now.

22 Q Answer the question.

23 MS. GOLDBERG: Again, he's already
24 indicated to you what he remembers.

25 MR. ZABELL: Counselor -- you know

1 P. Mendez

2 what? We're just going to call the
3 judge.

4 MS. GOLDBERG: Okay, let's call
5 the judge.

6 I didn't even tell him not to
7 answer. I'm just stating for the record
8 you've asked eight times, so you can ask
9 the judge to ask him again, and I will
10 just state the same objection.

11 [Whereupon, a ruling was sought
12 with the Court:]

13 THE SECRETARY: Good afternoon.
14 Judge's chambers.

15 MR. ZABELL: Good afternoon. This
16 is Saul Zabell. I'm calling with my
17 adversary, Lauren Goldberg, in the
18 Quintanilla vs. Suffolk Paving Corp.
19 matter. We're in the middle of a
20 deposition, and we require the judge's
21 assistance.

22 THE SECRETARY: Well, just to let
23 you know upfront, the judge is out today,
24 so I have to see if another magistrate is
25 available to handle the dispute.

1 P. Mendez

2 MR. ZABELL: I think it's Marley;
3 right?

4 THE LAW SECRETARY: This is
5 Marley.

6 MR. ZABELL: Hi, Marley.
7 Saul Zabell. How are you?

8 THE LAW SECRETARY: Good. How are
9 you?

10 MR. ZABELL: Okay. I'm calling
11 from a deposition. I'm here with
12 Ms. Goldberg, my adversary, in the
13 Quintanilla matter.

14 We're at the deposition, and
15 Ms. Goldberg is peppering the record with
16 speaking objections, and I've advised her
17 that it's inappropriate, and I've even
18 advised her that I'd be willing to give
19 her a copy of the Federal Rules and a
20 paralegal to assist her so she can
21 familiarize herself with them, but she
22 continues to give speaking objections.

23 Now, I know the judge is not in,
24 so I'd be willing to take your advice on
25 how best to handle this.

1 P. Mendez

2 THE LAW SECRETARY: Is the witness
3 in the room right now?

4 MR. ZABELL: Yes.

5 THE LAW SECRETARY: You can excuse
6 the witness for just a moment.

7 (Whereupon, the witness left the
8 conference room.)

9 MR. ZABELL: Okay, he stepped out.

10 Just to clarify a little more.
11 The witness's primary language is
12 Spanish, and we do have an interpreter
13 here, so it's clogging up the record even
14 more because we have that extra layer of
15 communication here.

16 THE LAW SECRETARY: Great. Okay,
17 Ms. Goldberg, to you.

18 MS. GOLDBERG: Mr. Zabell has
19 asked the same question, approximately,
20 eight times. After the sixth, seventh,
21 and eighth times of getting the same
22 answer over and over, I simply said it's
23 getting to the point of harassment. The
24 witness has indicated what he remembers
25 and what he doesn't.

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P. Mendez

I don't think Mr. Zabell is satisfied or likes the answer, so he wants to keep asking it over and over. I actually have not instructed the witness not to answer. I've just clearly stated that this is getting to the point of harassment, and at which point, he wanted to jump up, and call the judge, and I said, okay, fine, call the judge.

MR. ZABELL: I don't really jump that much these days, but the problem is this. It's because we're communicating through an interpreter, and the interpreter is in the room as is the court reporter so we can read back portions.

Essentially, what's happening is that there are allegations in the complaint that he has incurred legal fees as a result of a separate lawsuit that counsel has alleged was retaliatory. He's testifying that if he was to receive a bill, he would pay it, but he's not sure if he paid money to his counsel

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P. Mendez

which is specifically alleged; the representation is made in the complaint.

I'm just trying to follow up on that, and what's happening is, if there is a speaking objection, he's feeding off of the speaking objection, and using it to say: Well, whatever my attorney says, that's it, so ask her.

That's why I have the problem with the speaking objection. A little speaking objection here or there, I can live with, but this is actually hampering this witness answering.

MS. GOLDBERG: Well, it's getting to the point of harassment, and that's the only reason why I stepped in.

I've said practically nothing during the course of this deposition, but when a question is asked eight times, over and over again, and he's gotten his answer, but obviously, not satisfied, you know, obviously, I don't want to be repetitive, but that's when I stepped in.

THE LAW SECRETARY: Okay. As Rich

1 P. Mendez

2 told you, the judge is out today. Let me
3 see who I can get on the phone with you,
4 and try to adjudicate this.

5 MR. ZABELL: Can I ask you a
6 question?

7 THE COURT: Yes.

8 MR. ZABELL: Typically, when you
9 get issues from depositions, when
10 attorneys call regarding speaking
11 objections, is there like a typical
12 response that Judge Thomlinson usually
13 gives?

14 THE LAW SECRETARY: There really
15 isn't. I mean, it just depends on
16 exactly what the situation is, and
17 obviously, the interpreter complicates
18 things, but let me try to look around for
19 someone, and we'll get back to you.

20 Is there a number I can reach you
21 at?

22 MR. ZABELL: Sure. We're in my
23 office, so the number is (631) 589-7242.

24 THE LAW SECRETARY: Okay. Can you
25 take a break for a few minutes?

1 P. Mendez

2 MR. ZABELL: I'll be able to
3 continue. We're going to be here all
4 day. We can star this question and get
5 back to it, or perhaps Ms. Goldberg will
6 rethink her position as the day wears on.

7 MS. GOLDBERG: I'm fine with him
8 asking the question one more time, but I
9 just think there has to be a limit. I
10 mean, there has to be a limit. We're not
11 going to sit here 15 more times until the
12 witness gives the answer and until he
13 gives the answer he wants.

14 MR. ZABELL: You know me. I'm
15 just in pursuit of truth and honesty.

16 THE LAW SECRETARY: All right. I
17 got everyone's position, so I will get
18 back to you as soon as I can; okay?

19 MR. ZABELL: Thank you very much
20 for your time.

21 MS. GOLDBERG: Thank you.

22 [Whereupon, the telephone call was
23 concluded.]

24 MR. ZABELL: You've got an issue
25 here, my friend.

1 P. Mendez

2 MS. GOLDBERG: Okay. All right.

3 MR. ZABELL: You do.

4 MS. GOLDBERG: Glad to know that.
5 Thanks for letting me know.

6 MR. ZABELL: Well, if you've made
7 a material, false representation of a
8 complaint and you signed that complaint,
9 that's factual assertion. That's yet
10 another instance of dishonesty to the
11 Court.

12 MS. GOLDBERG: Thanks for letting
13 me know, Saul. Thanks for letting me
14 know.

15 Proceed with your deposition;
16 okay? Just proceed with your deposition.
17 Ask your questions, and let's move on.

18 I mean, I don't know. Is it some
19 sick, twisted pleasure? I don't know. I
20 don't know what it is, Saul, but let's
21 just continue with the deposition, and
22 ask the questions.

23 MR. ZABELL: "As result of
24 defendants' unlawful conduct, plaintiffs
25 have incurred and still incur legal

1 P. Mendez

2 bills."

3 That's your language; that's not
4 his.

5 MS. GOLDBERG: I know it's my
6 language.

7 MR. ZABELL: And it's not true.

8 MS. GOLDBERG: So says you.

9 MR. ZABELL: I'll be right back.

10 (Whereupon, a recess was taken at
11 this time.)

12 Q Mr. Mendez, look at me please.
13 Your attorney has said that you have incurred
14 legal fees as a result of Mr. Vecchia's lawsuit
15 against you.

16 Have you paid any legal fees as a
17 result of that lawsuit?

18 MS. GOLDBERG: Objection.

19 You can answer.

20 A Well, the same question again
21 seven times. As I told you before, if she says
22 that I have to pay, I will pay them.

23 Q But you have not paid them
24 anything yet; correct?

25 MS. GOLDBERG: Objection again,

1 P. Mendez

2 but go ahead and answer it again.

3 A I don't remember. I don't

4 remember. A question?

5 MS. GOLDBERG: It's not for you to
6 ask the questions.

7 MR. ZABELL: Please interpret what
8 he says.

9 MS. GOLDBERG: I need to --

10 MR. ZABELL: No, no. He's
11 answering. Don't interrupt him.

12 MS. GOLDBERG: If he's about to
13 disclose --

14 MR. ZABELL: Don't interrupt him.
15 He's a competent person. You insult him --

16 MS. GOLDBERG: I'm instructing
17 that he not disclose --

18 MR. ZABELL: You insult him when
19 you try to control him. He's a big boy.
20 He knows how to answer questions. He's
21 okay. Don't insult your own client.

22 MS. GOLDBERG: I'm just reminding
23 him not to disclose what's been
24 said between he and I. That's all I'm
25 doing, Mr. Zabell.

1 P. Mendez

2 A The same that I said before. If
3 they bill me, I will pay them. I don't remember
4 if they did.

5 Q Do you have any copies of bills
6 that you received from your attorneys?

7 A I don't believe so. I don't know.
8 I don't believe so.

9 Q Did you ever write any checks to
10 your attorneys?

11 A I have the check, but I don't have
12 enough money in the bank, so how can I write a
13 check?

14 Q So does that mean that you have
15 never written a check to your attorneys?

16 A No.

17 Q Now, you testified that you would
18 do side jobs for cash payments; is that correct?

19 MS. GOLDBERG: Objection to form.

20 You can answer that.

21 A That was four or five years ago,
22 but two or three jobs a year, and he knows it,
23 or he knew it.

24 Q You testified that you would pay
25 for the use of Mr. Vecchia's equipment; is that

1 P. Mendez

2 correct?

3 A As I said, when I used the 550, yes.

4 Q Do you have any receipt or
5 documentation to prove that you paid Mr. Vecchia
6 for the use of his equipment?

7 A No. It was his word and mine, and
8 he would say to just leave it with the mechanic,
9 and I would take the pickup.

10 THE INTERPRETER: I'm sorry.

11 Clarification.

12 A No. Leave the pickup in the yard,
13 and take the other vehicle.

14 Q Did you record or report any of
15 the cash payments that you received from your
16 private jobs on your income tax returns?

17 MS. GOLDBERG: Objection.

18 A No.

19 Q Did you ever ask Mr. Vecchia to
20 pay you off the books so that your children
21 could get health insurance?

22 MS. GOLDBERG: Objection.

23 A I don't remember, but when we were
24 with the union, the wife always made objections.
25 She promised me four or five times that she was

1 P. Mendez

2 going to help me. She was going to help me, but
3 she never did.

4 Q When did you join the union?

5 A I believe it was around 2006; it
6 seems to me.

7 MR. ZABELL: Mr. Mendez, I'm going
8 to ask you to leave.

9 (Whereupon, the witness left the
10 conference room.)

11 [Whereupon, the following colloquy
12 was had outside the presence of the
13 witness.]

14 MR. ZABELL: Hi, Marley.

15 THE LAW SECRETARY: Hello. Is
16 everyone on the line?

17 MR. ZABELL: Everyone is on the
18 line. We just asked the witness to leave
19 the deposition.

20 THE LAW SECRETARY: Ms. Goldberg,
21 are you there?

22 MS. GOLDBERG: Yes, I am.

23 THE LAW SECRETARY: Okay, great.

24 I was able to speak to the judge,
25 and I filled her in on exactly what you

1 P. Mendez

2 were telling me.

3 The judge's directive is this:

4 She does not want there to be any
5 speaking objections during the
6 deposition.

7 Ms. Goldberg, you can object only
8 to form, and you would do that just by
9 saying the word "objection," so there
10 should not be any further speaking
11 objections.

12 If Mr. Zabell is asking repetitive
13 questions, that's how he chooses to spend
14 his seven hours, then that's how he
15 chooses to do it.

16 That's her ruling. Do you have
17 any further issues or questions?

18 MR. ZABELL: Nothing. Not from
19 defendant.

20 MS. GOLDBERG: Not at this time.
21 Not at this time. Not at this time.

22 MR. ZABELL: Marley, thank you for
23 your assistance.

24 THE LAW SECRETARY: Sure. No
25 problem.

1 P. Mendez

2 MS. GOLDBERG: Thank you.

3 MR. ZABELL: Why don't we take a
4 two- or three-minute break? You can use
5 the lavatory, and you can explain to your
6 client what just happened with the Court.

7 (Whereupon, a recess was taken at
8 this time.)

9 (A document was marked as
10 Defendants' Exhibit 3 for identification,
11 as of this date.)

12 Q Mr. Mendez, I'm going to show you
13 a document identified as Defendants' Exhibit 3.
14 Can you please take a look at
15 that?

16 MS. GOLDBERG: Do you have one for
17 me?

18 MR. ZABELL: Sure.

19 A (Witness complies.)

20 Q Do you know what this document is?

21 A Is this the demand?

22 Q I'm asking you the question, so
23 you tell me; yes or no?

24 A Yes, this is the demand.

25 Q Have you ever seen this document

1 P. Mendez

2 before?

3 A Yes.

4 Q Do you believe that everything
5 within this document is truthful and accurate?

6 A Yes.

7 Q Is it true that you have incurred
8 legal bills as a result of Mr. Vecchia's lawsuit
9 against you?

10 MS. GOLDBERG: Objection.

11 A I don't understand this question.

12 Q Did you incur any legal bills as a
13 result of Mr. Vecchia suing you?

14 A No. It's almost the same response
15 I gave before. If in the future I need to pay,
16 I will pay it, but right now, no.

17 Q So if in the future you need to
18 pay, you will pay, but so far, you have not paid
19 anything; correct?

20 MS. GOLDBERG: Objection.

21 A I haven't paid.

22 Q So if the complaint says that you
23 did pay, it would not be true and accurate; is
24 that correct?

25 THE INTERPRETER: Can I repeat the

1 P. Mendez

2 question to him?

3 MR. ZABELL: Yes.

4 MS. GOLDBERG: Objection.

5 A I don't remember. I haven't paid.

6 I don't remember.

7 Q Now, every year that you worked
8 for Suffolk Paving or Suffolk Asphalt, you would
9 be laid off around November or December;
10 correct?

11 MS. GOLDBERG: Objection.

12 Q Yes or no?

13 A I have to explain.

14 Q Just answer yes or no, and then
15 you can explain.

16 MS. GOLDBERG: Objection.

17 A Okay.

18 Q Yes or no?

19 A Yes, but this was only
20 through 2009 that it happened. In November
21 11th -- the other years, it was in January
22 because there was always -- or December 25,
23 because there were always small jobs to be done.

24 Q Do you know when this lawsuit was
25 filed?

1 P. Mendez

2 MS. GOLDBERG: Objection.

3 A Not exactly.

4 Q Was the lawsuit filed after you
5 were laid off in 2009?

6 A It was before.

7 Q What was before?

8 A I don't remember the month, but it
9 was before.

10 Q What was before?

11 MS. GOLDBERG: Objection.

12 A I believe it was in September or
13 October. I don't know.

14 Q You believe the lawsuit was filed
15 in September or October?

16 A We saw paperwork, but exactly, I
17 don't know.

18 Q Mr. Mendez, your role here again
19 is just to answer the questions that I ask you,
20 not to explain your answer unless I ask for an
21 explanation.

22 Do you understand that?

23 A Yes, but sometimes there's a
24 problem for somebody to explain.

25 Q If there is a problem, you can

1 P. Mendez

2 discuss it with your attorney during the breaks
3 or afterwards. That's her responsibility. This
4 process will go a lot quicker if you just answer
5 the questions I ask you.

6 Do you understand that?

7 A That's okay.

8 Q Is it your position that you were
9 laid off in November of 2009, after Suffolk Paving
10 received your lawsuit?

11 MS. GOLDBERG: Objection.

12 A Yes.

13 Q Now, you have Exhibit 3 in front
14 of you; do you not? Do you have that in front
15 of you?

16 A Yes.

17 Q I'm going to ask that you turn to
18 page 10 of that document.

19 A (Witness complies.)

20 Q Are you at page 10?

21 A Yes.

22 Q I'm going to ask that you look at
23 the paragraph numbered 78.

24 Do you see that; yes or no?

25 A Yes, I see it.

1 P. Mendez

2 Q Do you see that paragraph 78 says,
3 "The initiating complaint in this case was
4 served upon defendants on December 14, 2009"?

5 A Yes.

6 Q Do you believe that statement to
7 be true and accurate?

8 A The truth is, I see it here, but I
9 remember that I was terminated on November 11.
10 That's what I remember.

11 MS. GOLDBERG: I need to request a
12 five-minute break.

13 MR. ZABELL: As soon as I'm
14 finished with this line of questioning.

15 Q Is it possible that you were laid
16 off before Suffolk Asphalt and Suffolk Paving
17 was served with the complaint?

18 A No, because they already knew more
19 or less what was happening. I delivered it to
20 Tommy. I delivered the pickup and the cellular
21 phone to them.

22 Q When did you deliver the cellular
23 phone and the pickup to them?

24 A I don't remember very well, but I
25 delivered to them, and I think it was after the

1 P. Mendez

2 demand.

3 Q It was after December of 2009?

4 A Yes.

5 Q You were laid off in November
6 of 2009; correct?

7 A To my recollection, yes. I have
8 to check.

9 MS. GOLDBERG: Are you done with
10 this line of questioning?

11 MR. ZABELL: No, I'm still going
12 on this.

13 MS. GOLDBERG: Okay.

14 Q So you were laid off before you
15 served a copy of the complaint on Tommy; is that
16 correct?

17 A No, no, no. They gave the papers,
18 but Tommy already knew what was going to happen
19 because I was complaining about the overtime.

20 Q You were laid off before the
21 complaint was served upon Suffolk Asphalt,
22 Suffolk Pacing, and Louis Vecchia; correct?

23 A I don't remember, but as I said, I
24 was complaining about overtime, and they already
25 knew what was going to happen.

1 P. Mendez

2 Q What would Mr. Tom McEvilly say to
3 you when you would complain?

4 A What Tommy said was to do whatever
5 you have to do.

6 Q Did he say anything else to you,
7 other than do what you have to do?

8 MS. GOLDBERG: Objection.

9 Q You may answer.

10 A What he said was that I'll put
11 your overtime in the computer, and Louis is in
12 charge of checking what you're going to get paid
13 or not.

14 Q Did he say anything else, other
15 than those two things?

16 A To my recollection, no.

17 Q When did you speak to Tom
18 McEvilly?

19 MS. GOLDBERG: Objection.

20 A Some four months before November,
21 and calling every Friday.

22 Q Are you finished with your answer?

23 A Yes, because it's difficult for me
24 to say the exact time and exact dates.

25 Q So you're finished with your

1 P. Mendez

2 answer?

3 A Yes.

4 MR. ZABELL: I believe your
5 attorney wanted to talk to you and tell
6 you how poorly your testimony is going,
7 so you may take that break now.

8 MS. GOLDBERG: I think that's a
9 little bit of a mischaracterization
10 there, Mr. Zabell.

11 (Whereupon, a recess was taken at
12 this time.)

13 MR. ZABELL: You look like you
14 want to say something.

15 MS. GOLDBERG: Ready to go. Just
16 proceed.

17 Q Mr. Mendez, you just took about a
18 five-minute break; is that correct?

19 A Whatever they want.

20 Q Is that a yes or no?

21 A For me, it's the same.

22 Q It's the same as what?

23 A Five minutes, yes.

24 Q During that break, did you speak
25 with your attorney?

1 P. Mendez

2 A Yes.

3 Q Did you talk about this
4 deposition?

5 MS. GOLDBERG: Objection.

6 I'm going to instruct him not to
7 answer.

8 MR. ZABELL: No, you can't. I'm
9 not asking specifics; I'm asking about
10 the deposition. You don't have a choice.

11 A Something different.

12 Q She asked for a break to talk to
13 you, you talked to her during the break, but you
14 talked about something other than the
15 deposition; is that your testimony?

16 A Yes, almost. Yes, but it's about
17 something else.

18 Q Do you understand why that might
19 appear to be a dishonest answer?

20 MS. GOLDBERG: Objection.

21 A I'm speaking the truth. I don't
22 know.

23 Q Do you know how much of the
24 \$25,000 loan you paid back to Mr. Vecchia?

25 A How much I have paid?

1 P. Mendez

2 Q Yes.

3 MS. GOLDBERG: Objection.

4 A I don't understand that. That I
5 have to pay to him, or what I have already paid
6 to him?

7 Q How much have you already paid
8 back to him?

9 Just give me an amount.

10 MS. GOLDBERG: Objection.

11 A As I said before, sometimes I gave
12 him one Saturday for the week, and sometimes two
13 days per week.

14 THE INTERPRETER: I don't
15 understand, actually, but I'll explain
16 the way he said it.

17 A How much would it be per month
18 adding \$375 and \$400 a day? Again, per month.

19 Q Do you have any idea how much you
20 paid back to Mr. Vecchia?

21 A \$25,000 from my accounts, and he
22 knows.

23 Q When did you pay back all that
24 money?

25 A Every Friday or every Saturday,

1 P. Mendez

2 when I told him to take two days.

3 Q Did you tell your attorney that
4 you told Mr. Vecchia to take two days off of
5 your pay every paycheck?

6 MS. GOLDBERG: I'm going to
7 instruct him not to answer.

8 MR. ZABELL: He's got to. He has
9 no choice.

10 It's absolutely necessary to
11 determine whether or not your complaint
12 takes into account these amounts that he
13 says he paid my client.

14 MS. GOLDBERG: I do not follow.
15 You're soliciting attorney/client
16 privilege.

17 MR. ZABELL: I'm not surprised
18 that you do not follow.

19 I'm entitled to an answer.

20 MS. GOLDBERG: I think it's
21 attorney/client privilege.

22 I'm going to instruct him not to
23 answer.

24 Q This complaint that you have in
25 front of you as Exhibit 3, does that include

1 P. Mendez

2 allegations of not getting paid for periods of
3 time that you claim you told Mr. Vecchia to
4 deduct from your pay?

5 MS. GOLDBERG: Objection.

6 A No.

7 THE INTERPRETER: May I ask the
8 witness to break the response so I can --

9 MR. ZABELL: Sure.

10 A No, because so far, we've only
11 talked about Monday through Friday. Saturdays,
12 he only paid us in cash.

13 Q I thought you testified earlier
14 that you didn't receive cash every week.

15 Didn't you testify to that?

16 A No. What I said was that he did
17 pay me in cash, but that on Saturdays, he would
18 take \$400 or \$375 in payment of the loan for the
19 \$25,000.

20 Q So every week, you got paid in
21 cash and in check?

22 MS. GOLDBERG: Objection.

23 A No. It's the same answer, but on
24 Saturdays, he knew that we were going to get
25 paid, and Saturdays he would withhold. I don't

1 P. Mendez

2 know how he was going to pay it, by check or in
3 cash, but Saturdays belonged to him.

4 Q Mr. Mendez, I need you to pay
5 attention to these questions. They're very
6 important; okay?

7 A Yes.

8 Q When you worked at Suffolk Asphalt
9 and Suffolk Paving, did you work every Saturday?

10 A Yes, almost every Saturday because
11 I did cement. Yes, almost all Saturdays.

12 Q Did you receive cash payments for
13 your work on weekends?

14 A As I said, from six to nine times
15 per year.

16 Q Did you report those cash payments
17 on your income tax returns?

18 A No, because they didn't want us to
19 say anything about it.

20 Q Did there come a time, Mr. Mendez,
21 where you became a union member?

22 A Yes. It seems in 2006.

23 Q What union did you become a
24 member?

25 A Local 138.

1 P. Mendez

2 Q Are you familiar with a document
3 called a collective bargaining agreement?

4 MS. GOLDBERG: Objection.

5 A No.

6 Q Are you familiar with any sort of
7 document that governs the terms and conditions
8 of your employment?

9 MS. GOLDBERG: Objection.

10 A I don't understand that question.

11 Q Do you know what the terms and
12 conditions of your employment means?

13 A Well, 138 deals with driving
14 equipment.

15 Q Do you pay union dues to Local 138?

16 A Yes.

17 Q Are contributions made from your
18 paycheck to Local 138?

19 A I've just been paying every month.
20 I don't know anything else.

21 Q Were you bringing home more money
22 in your paycheck before you became a union
23 member or after you became a union member?

24 A Just about the same.

25 (A document was marked as

1 P. Mendez

2 Defendants' Exhibit 4 for identification,
3 as of this date.)

4 Q I'm going to show you a document
5 called Defendants' Exhibit 4.

6 Do you know what that document is?

7 A Yes.

8 Q What is that document?

9 A This is the manual of the union.
10 It's not the booklet, but it's the laws as a
11 member.

12 Q Is it a copy of the booklet?

13 A Yes.

14 Q It has your name on it; does it
15 not?

16 A Yes.

17 Q Did you write that?

18 A Yes, I believe so.

19 Q Are you currently a member of
20 Local 138?

21 A I still am; yes.

22 Q Weren't you recently removed from
23 the union for committing fraudulent activities?

24 MS. GOLDBERG: Objection.

25 Q You may answer.

1 P. Mendez

2 A I have a letter, but I don't know
3 exactly what happened. I have paid up until
4 November.

5 Q Does that letter say that you're
6 removed from the union?

7 MS. GOLDBERG: Objection.

8 A What I understand that the letter
9 says is that they're going to get me a chance,
10 and my boss spoke to the boss, and they will let
11 me know.

12 Q Who is your boss?

13 A Right now he's called Brian, but I
14 don't know his surname.

15 Q What is the name of your employer?

16 A DF Stone.

17 Q What type of work are you doing at
18 DF Stone?

19 A The same. Machinery operator.

20 Q Do you do any work on prevailing
21 wage jobs?

22 A Yes.

23 Q Are you getting paid prevailing
24 wage rates?

25 A Yes. If I work as a common

1 P. Mendez

2 laborer, they pay me the rate of laborer on that
3 day. If I operate the machine, they pay me the
4 machine operator's rate.

5 Q What is the machine operator's
6 rate?

7 A I'm not sure; 76 or 79.

8 Q When you worked for Suffolk
9 Asphalt or Suffolk Paving, did you ever get paid
10 double time?

11 MS. GOLDBERG: Objection.

12 A I believe not. Maybe a few times.

13 Q When you worked for Suffolk
14 Paving, did you ever get paid time-and-a-half?

15 A The same answer. Maybe a little
16 bit. It didn't happen very often.

17 Q Did you ever get paid grease time?

18 MS. GOLDBERG: Objection.

19 A In the beginning, not. Afterwards
20 when they realized what the laws prescribed,
21 yes. They would pay me about half-an-hour.

22 Q Did you ever arrive at work early
23 to grease your vehicle?

24 MS. GOLDBERG: Objection.

25 A We started at 6:30, and I used my

1 P. Mendez

2 lunchtime because I almost don't eat, and he
3 knows that.

4 Q When you worked for Suffolk
5 Asphalt and Suffolk Paving, what time did you
6 arrive on the work site every day?

7 MS. GOLDBERG: Objection.

8 A It depended on them. If Tommy
9 said that you should show up in the yard at
10 6:30, I would do so.

11 Locally it was 6:30, Riverhead,
12 Nassau a bit earlier, and the City, earlier
13 still.

14 Q Did you show up in the yard every
15 day before work?

16 MS. GOLDBERG: Objection.

17 A Mostly, yes.

18 Q Why?

19 A It was their order. It was their
20 order to go to the yard.

21 Q Were you picking up any material
22 in the mornings in the yard?

23 A Sometimes, yes; sometimes, no. It
24 was according to the orders they gave, and if
25 they said go directly to the job, then we would

1 P. Mendez

2 go directly to the job.

3 Q Did you ever pick up workers on
4 your way to the yard?

5 A Only those that were with me in my
6 group.

7 Q Were there workers that could just
8 go directly to the job and meet you there?

9 MS. GOLDBERG: Objection.

10 Q You can answer.

11 A Everybody had to go to the yard.
12 If they gave me a few more workers, I would pick
13 them up at the yard.

14 Q I'm going to show you this
15 document.

16 Have you ever seen this document
17 before?

18 A (Perusing.)

19 No.

20 Q Did you ever see this billboard
21 before?

22 MS. GOLDBERG: Objection.

23 A (Perusing.) No, no. I don't
24 remember.

25 Q Thank you. I'll take that back.

1 P. Mendez

2 What is the union policy on paying
3 you travel time?

4 A From what I understand, the union
5 says to go to the job, but their laws were to go
6 to the yard.

7 Q Did you ever complain to the union
8 throughout your employment at Suffolk Asphalt or
9 Suffolk Paving?

10 A I've never done so. They asked
11 many times, but I did not do it in order to keep
12 my job.

13 Q So you pay money out of every
14 paycheck for an organization whose job it is to
15 protect your rights, but you never filed a
16 complaint with them against Suffolk Asphalt or
17 Suffolk Paving; is that correct?

18 MS. GOLDBERG: Objection.

19 THE INTERPRETER: Shall I repeat
20 the question to him?

21 MR. ZABELL: Is that what he
22 asked?

23 THE INTERPRETER: He doesn't
24 understand the question.

25 Q I'm going to ask the question

1 P. Mendez

2 again, and I'll say it nice and slow.

3 You pay money from every one of
4 your paychecks to a union, but you didn't
5 complain to that union when you thought you were
6 being shorted in your pay?

7 MS. GOLDBERG: Objection.

8 A For the same reason. Because
9 every time he had to pay us overtime, it would
10 be a problem for him, so we didn't file a
11 complaint. We never complained.

12 Q So you never complained to the
13 union who you give money to, but you did
14 complain to Ms. Goldberg, who you do not give
15 money to; is that your testimony?

16 MS. GOLDBERG: Objection.

17 Again, you're soliciting his --

18 Q You can answer the question.

19 MS. GOLDBERG: You're going after --

20 MR. ZABELL: That's a speaking
21 objection.

22 MS. GOLDBERG: And I'm going to
23 instruct him not to answer.

24 MR. ZABELL: No, you don't have
25 that right.

1 P. Mendez

2 MS. GOLDBERG: You're eliciting
3 attorney/client privileges.

4 MR. ZABELL: You're absolutely
5 incorrect. One more word and I will call
6 the judge back. It's on the record.

7 MS. GOLDBERG: Please read over
8 the question.

9 I believe that's soliciting
10 attorney/client privilege information.

11 MR. ZABELL: Maybe if you put away
12 your phone and paid attention to the
13 question, you'd realize the absurdity of
14 your objection.

15 MS. GOLDBERG: I'm sitting here.
16 There's no need to...

17 MR. ZABELL: Go ahead. You can
18 read back the question.

19 (Whereupon, the requested portion
20 of the record was read by the court
21 reporter.)

22 Q Yes, you can answer that.

23 MS. GOLDBERG: You're soliciting
24 what he told me.

25 MR. ZABELL: No, I'm not.

1 P. Mendez

2 MS. GOLDBERG: Isn't that not
3 attorney/client privilege?

4 MR. ZABELL: Do you not understand
5 the concept of a legal complaint?

6 MS. GOLDBERG: Well, then ask him
7 that. Ask him that.

8 MR. ZABELL: Lauren, I'm warning
9 you. Your role here is to remain silent.
10 You objected to the form. You've already
11 been warned by the Court.

12 You can object to the form --

13 MS. GOLDBERG: If you're
14 soliciting attorney/client privilege, I'm
15 allowed to object.

16 Q You may answer the question. You
17 may answer the question now, sir.

18 A For the same reason. In order not
19 to cause a problem to him, but later on, he
20 claimed there's no money. There is no money.

21 Q Is this the same person that you
22 thanked at the beginning of this deposition for
23 helping take care of yourself and your family?

24 MS. GOLDBERG: Objection.

25 A Yes, it's the same person, and I

1 P. Mendez

2 will thank him for the rest of my life, but he
3 has been changing bit by bit.

4 Q So you're thanking him by suing
5 him.

6 Do you understand that?

7 MS. GOLDBERG: Objection.

8 A I understand, but it was not a
9 decision -- it was a decision of many people,
10 and sometimes he would do things that would get
11 me over my head. Do you understand?

12 Q But not everybody is suing.

13 Your brother is not suing him;
14 correct?

15 MS. GOLDBERG: Objection.

16 A Yes, but my brother has not worked
17 for him that long. He started last year. He
18 worked for him before, but year by year. I
19 believe a year-and-a-half, he worked for him.

20 Q And still to this day, Mr. Vecchia
21 has offered to help you if you needed help; is
22 that correct?

23 MS. GOLDBERG: Objection.

24 A It is possible, yes.

25 Q Now, you know that if you don't

1 P. Mendez

2 want to sue Mr. Vecchia, you don't have to sue
3 Mr. Vecchia.

4 Do you understand that?

5 MS. GOLDBERG: Objection.

6 A I agree.

7 Q Some of the things that
8 Mr. Vecchia did that got you angry was
9 installing GPS in the truck; correct?

10 A He did so in all the trucks.

11 Q And that got you angry; correct?

12 MS. GOLDBERG: Objection.

13 A No. I just was claiming overtime,
14 and he hung up on me because he was telling me
15 I'm checking all the vehicles, but I'm not
16 checking the overtime, and that is the reason
17 why I hung up the phone on him.

18 Q Did you ever disconnect the GPS
19 from the truck? Look at me please. Did you
20 ever disconnect the GPS in the truck?

21 MS. GOLDBERG: Objection.

22 A Yes, but the reason is that they
23 were checking only the GPS and not the overtime,
24 and I told them, the person who disconnected it,
25 check with Louie, and I told the person to check

1 P. Mendez

2 with Louie and Helene so that they could check
3 not only the GPS, but also my overtime.

4 Q When did you disconnect the GPS?

5 A I don't remember.

6 Q How many times did you disconnect
7 the GPS?

8 A One, two, or three times; not
9 more.

10 Q Not more than three times?

11 A I don't remember, but I remember
12 that when I got more annoyed, yes.

13 Q Do you understand that that's
14 considered destruction of company property?

15 MS. GOLDBERG: Objection.

16 A No, no. Because I only took out
17 the fuse.

18 Q Did you get into a fight with the
19 man that was sent to fix the GPS unit?

20 MS. GOLDBERG: Objection.

21 A No. I only told him that I just
22 want them to check not only the GPS, but also
23 the overtime, and that they check with him and
24 his wife.

25 Q Do you know if the GPS was used to

1 P. Mendez

2 track overtime?

3 A No, I only know that if the
4 drivers are going too fast, his wife would call;
5 otherwise, I don't know.

6 Q And that bothered you too?

7 MS. GOLDBERG: Objection.

8 A No, because he knows that if I had
9 to work, I work. Every time I have to work, I
10 worked.

11 Q How did you keep track of your
12 overtime?

13 A They did this by means of a
14 timesheet. I don't know what it's called in
15 Spanish, but they gave us an hour, a time to
16 arrive at the yard, and I always arrived ten or
17 15 minutes before the time I was supposed to
18 arrive at the yard.

19 Q Did you keep track of your time on
20 a daily basis?

21 A For a majority of time, yes.

22 Q Where are those records?

23 A We gave them the day before they
24 made the check. We gave them on Wednesdays to
25 Tommy. Tommy would put them in the computer,

1 P. Mendez

2 and sometimes he would tear them up.

3 Q Is it your position that when you
4 would give in your hours, you would only get
5 paid for most of your time, but not all of it?

6 MS. GOLDBERG: Objection.

7 Q You may answer.

8 A The majority are 40 hours, because
9 we had to work ten hours in order to get paid
10 for eight hours.

11 Q Are you saying you got paid for
12 the majority of your time?

13 MS. GOLDBERG: Objection.

14 A Of the 40 hours, not the overtime.

15 Q Were there lunch breaks on each
16 work site?

17 A Breakfast, yes; but lunch, I
18 almost never took. A cup of coffee, that is the
19 extent of my lunch; five or ten minutes. That's
20 about it.

21 Q So you would take a breakfast
22 break each day?

23 MS. GOLDBERG: Objection.

24 A Almost never.

25 Q You just testified that you took a

1 P. Mendez

2 breakfast break.

3 MS. GOLDBERG: Objection.

4 THE INTERPRETER: Clarification.

5 The person who worked with him took a
6 breakfast break, but he, almost never.

7 Q Who was that person?

8 A Well, they gave me several people.

9 Q Nobody you can think of right now?

10 MS. GOLDBERG: Objection.

11 A It could be Alejandro who worked a
12 bit more time with me.

13 Q Anybody else?

14 A For the past five years, another
15 one was called Javier, but Javier doesn't work
16 there anymore.

17 Q You were given a vehicle to
18 transport yourself to and from work; correct?

19 MS. GOLDBERG: Objection.

20 A Yes.

21 Q You were given money to fuel that
22 vehicle; is that correct?

23 MS. GOLDBERG: Objection.

24 A No.

25 Q How did you fill up that vehicle

1 P. Mendez

2 with gasoline?

3 MS. GOLDBERG: Objection.

4 A There was a pump in the yard.

5 Q So you never paid for fuel for
6 that vehicle; is that correct?

7 MS. GOLDBERG: Objection.

8 A No, because the group leaders he
9 gave a vehicle and a cellular phone, as I said
10 before.

11 Q And he gave you the cellular phone
12 and the vehicle; correct?

13 MS. GOLDBERG: Objection.

14 A Yes.

15 Q What is the industry practice when
16 a group leader is given a vehicle?

17 MS. GOLDBERG: Objection.

18 A Because he is a chief or a
19 foreman, he gave it to me. I didn't ask for it.

20 Q Do you know what the industry
21 standard is with regard to pay when you're
22 driving the company vehicle?

23 MS. GOLDBERG: Objection.

24 A I don't understand, but he never
25 made mention of that.

1 P. Mendez

2 Q The current company that you work
3 for, are they giving you a vehicle?

4 A Yes, but one is a foreman or a
5 supervisor. They give you a vehicle, but now
6 I'm not a foreman, so I don't have a vehicle.

7 Q How did you communicate with
8 Louis Vecchia when you worked for Suffolk Asphalt
9 or Suffolk Paving?

10 MS. GOLDBERG: Objection.

11 A Anytime there was a problem, I
12 communicated with the dispatcher or Tommy, and
13 if I had to call him, I would call him on his
14 telephone, or he would call me back on my
15 cellphone.

16 Q What language did you communicate
17 with him?

18 A Not only in English, but a few
19 words like, what's happening, et cetera.

20 MR. ZABELL: Why don't we take a
21 lunch.

22 (Whereupon, a luncheon recess was
23 taken from 1:30 p.m. to 2:30 p.m.)

24 MS. GOLDBERG: I'd like to mark
25 all the questions regarding the GPS

1 P. Mendez

2 system as confidential.

3 MR. ZABELL: With regard to the
4 GPS system questions being marked as
5 confidential, I will review the
6 confidentiality agreement to determine
7 whether or not I agree with the
8 designation, but there is a procedure in
9 place for addressing when there is a
10 dispute.

11 Ms. Goldberg and I have discussed
12 it, and we have agreed that we will
13 adjourn the remainder of today's
14 deposition to give the parties an
15 opportunity to discuss this matter
16 further.

17 Both parties have committed to
18 having real discussions about a
19 resolution of this matter, and if we're
20 unable to do so, we'll resume with
21 Mr. Mendez's deposition in short order,
22 and the amount of time that we've
23 conducted this deposition so far will
24 count towards at least one of the
25 defendants' seven-hour period of time in

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P. Mendez

which to depose this individual.

MS. GOLDBERG: It's also my understanding as part of this, that we're going to delay the depositions that are next week so that we can have a dialog, because Monday may not be enough to -- we're going to get you a demand on Monday, but to have any -- there needs to be further dialog.

I'm hoping that we can spend next week trying to work on a settlement. Like I said, we are going to get you a demand, but obviously, I'm sure as you're aware, it's usually not a one-day process.

(Continued on next page.)

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MR. ZABELL: I will commit to at least adjourning until Monday, and we will be in communications on Monday.

MS. GOLDBERG: I think there is one on Tuesday, as well.

MR. ZABELL: Okay, we'll adjourn Monday and Tuesday.

Mr. Mendez, is this okay with you?

THE WITNESS: Good, yes.

(Time noted: 3:00 p.m.)

PRACELIS MENDEZ

Signed and subscribed to before me this _____ day of _____, 2011.

Notary Public, State of New York

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INDEX TO TESTIMONY

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
Pracelis Mendez	Mr. Zabell	4

REQUESTS FOR PRODUCTION

<u>DESCRIPTION</u>	<u>PAGE</u>
Copy of Mr. Mendez's passport	9
Home Depot receipts	40
Payroll documents not yet produced	41
Income tax returns from 2001 to present	54

INSERTS

Tax preparer's name	57
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EXHIBITS

<u>DEFENDANTS'</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Document	27
2	Document	28
3	Document	80
4	Document	94

C E R T I F I C A T E

I, KAREN M. LaMENDOLA, a Notary Public in
and for the State of New York, do hereby
certify:

THAT the witness whose testimony is
hereinbefore set forth, was duly sworn by me;
and

THAT the within transcript is a true
record of the testimony given by said witness.

I further certify that I am not related,
either by blood or marriage, to any of the
parties in this action; and

THAT I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of July, 2011.


KAREN M. LaMENDOLA

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ERRATA SHEET

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\$	2	5		
\$1,200 [1] - 33:15 \$20 [1] - 39:13 \$200 [2] - 34:3, 37:25 \$25 [1] - 32:14 \$25,000 [12] - 23:20, 24:4, 24:14, 28:20, 58:17, 60:2, 60:9, 60:23, 61:17, 89:24, 90:21, 92:19 \$300 [2] - 32:14, 38:15 \$325 [1] - 25:13 \$375 [4] - 25:13, 29:20, 90:18, 92:18 \$400 [4] - 25:13, 29:21, 90:18, 92:18 \$777.77 [1] - 30:16	2 [5] - 7:18, 28:24, 29:4, 29:25, 115:20 2000 [1] - 32:18 2001 [12] - 34:25, 35:3, 41:14, 41:22, 42:7, 50:6, 50:10, 50:15, 50:20, 54:9, 56:17, 115:12 2002 [1] - 50:22 2003 [1] - 50:24 2004 [4] - 51:2, 51:5, 51:9, 52:5 2005 [5] - 23:3, 39:7, 39:8, 52:3, 52:6 2006 [5] - 52:7, 53:9, 53:12, 53:13, 78:5, 93:22 2007 [6] - 50:4, 52:9, 52:23, 53:5, 53:12, 53:13 2008 [4] - 8:17, 50:2, 52:12, 52:19 2009 [13] - 8:17, 33:11, 46:22, 49:24, 52:10, 52:14, 52:16, 82:20, 83:5, 84:9, 85:4, 86:3, 86:6 2010 [4] - 46:7, 49:6, 49:15, 49:17 2011 [3] - 1:14, 114:16, 116:19 22 [1] - 1:14 25 [2] - 35:11, 82:22 26th [1] - 116:19 27 [1] - 115:19 28 [1] - 115:20 2:30 [1] - 111:23	501 [1] - 2:9 54 [1] - 115:12 550 [2] - 37:24, 77:3 57 [1] - 115:15 589-7242 [1] - 71:23 59 [4] - 4:16, 22:23, 23:2, 23:4	24:11, 29:24, 30:10, 55:24, 56:3 accounts [1] - 90:21 accurate [4] - 44:19, 81:5, 81:23, 85:7 accused [1] - 57:18 action [1] - 116:15 activities [1] - 95:23 actual [1] - 59:16 adding [1] - 90:18 addition [1] - 32:9 additional [1] - 11:3 address [2] - 4:15, 20:16 addressing [2] - 49:2, 112:9 adjourn [2] - 112:13, 114:7 adjourning [1] - 114:3 adjudicate [1] - 71:4 administer [1] - 3:16 advance [2] - 11:6, 15:6 adversary [2] - 66:17, 67:12 adverse [1] - 47:6 advice [1] - 67:24 advise [1] - 17:12 advised [3] - 60:6, 67:16, 67:18 affirmance [1] - 7:8 affirmances [1] - 6:2 afternoon [2] - 66:13, 66:15 afterwards [5] - 32:10, 32:12, 45:14, 84:3, 97:19 ago [4] - 8:11, 8:14, 63:3, 76:21 agree [4] - 49:2, 57:8, 105:6, 112:7 agreed [3] - 24:10, 48:20, 112:12 AGREED [3] - 3:4, 3:9, 3:13 agreement [4] - 25:2, 29:20, 94:3, 112:6 ahead [2] - 75:2, 102:17 air [1] - 9:4 alcohol [2] - 8:6, 8:8 ALEJANDRO [1] - 1:4 Alejandro [1] - 109:11 ALEX [1] - 1:4 allegations [2] - 69:19, 92:2 alleged [2] - 69:22,	70:2 allowed [2] - 52:21, 103:15 almost [8] - 81:14, 89:16, 93:10, 93:11, 98:2, 108:18, 108:24, 109:6 ALSO [1] - 2:20 AMAYA [1] - 1:4 AMIR [1] - 1:4 amount [2] - 90:9, 112:22 amounts [1] - 91:12 AMSON [1] - 4:2 Amson [1] - 2:20 AND [3] - 3:4, 3:9, 3:13 angry [2] - 105:8, 105:11 annoyed [1] - 106:12 answer [112] - 5:5, 5:6, 6:20, 7:3, 9:14, 9:18, 13:24, 13:25, 14:9, 15:14, 16:5, 16:15, 16:21, 17:7, 17:17, 17:19, 18:19, 18:25, 19:5, 19:7, 19:8, 19:9, 19:14, 19:20, 20:21, 21:5, 23:12, 23:15, 23:24, 24:6, 24:12, 25:5, 25:8, 29:16, 29:17, 31:21, 31:24, 34:7, 36:8, 36:13, 36:14, 36:22, 37:4, 37:20, 38:7, 38:25, 40:2, 40:19, 42:15, 43:3, 44:4, 44:11, 44:22, 45:6, 46:11, 46:15, 46:25, 49:19, 49:20, 51:23, 54:17, 58:7, 59:10, 59:23, 60:11, 61:5, 62:13, 62:16, 63:6, 63:17, 63:18, 63:25, 64:15, 64:16, 64:23, 65:7, 65:9, 65:15, 65:22, 66:7, 68:22, 69:3, 69:6, 70:22, 72:12, 72:13, 74:19, 75:2, 75:20, 76:20, 82:14, 83:19, 83:20, 84:4, 87:9, 87:22, 88:2, 89:7, 89:19, 91:7, 91:19, 91:23, 92:23, 95:25, 97:15, 99:10, 101:18, 101:23, 102:22, 103:16, 103:17, 108:7 answered [4] - 63:15, 64:14, 64:22,
'89 [1] - 7:23 '98 [1] - 38:13	2008 [4] - 8:17, 50:2, 52:12, 52:19 2009 [13] - 8:17, 33:11, 46:22, 49:24, 52:10, 52:14, 52:16, 82:20, 83:5, 84:9, 85:4, 86:3, 86:6 2010 [4] - 46:7, 49:6, 49:15, 49:17 2011 [3] - 1:14, 114:16, 116:19 22 [1] - 1:14 25 [2] - 35:11, 82:22 26th [1] - 116:19 27 [1] - 115:19 28 [1] - 115:20 2:30 [1] - 111:23	6 631 [1] - 71:23 630 [3] - 97:25, 98:10, 98:11	7 76 [1] - 97:7 78 [2] - 84:23, 85:2 79 [1] - 97:7	70:2 allowed [2] - 52:21, 103:15 almost [8] - 81:14, 89:16, 93:10, 93:11, 98:2, 108:18, 108:24, 109:6 ALSO [1] - 2:20 AMAYA [1] - 1:4 AMIR [1] - 1:4 amount [2] - 90:9, 112:22 amounts [1] - 91:12 AMSON [1] - 4:2 Amson [1] - 2:20 AND [3] - 3:4, 3:9, 3:13 angry [2] - 105:8, 105:11 annoyed [1] - 106:12 answer [112] - 5:5, 5:6, 6:20, 7:3, 9:14, 9:18, 13:24, 13:25, 14:9, 15:14, 16:5, 16:15, 16:21, 17:7, 17:17, 17:19, 18:19, 18:25, 19:5, 19:7, 19:8, 19:9, 19:14, 19:20, 20:21, 21:5, 23:12, 23:15, 23:24, 24:6, 24:12, 25:5, 25:8, 29:16, 29:17, 31:21, 31:24, 34:7, 36:8, 36:13, 36:14, 36:22, 37:4, 37:20, 38:7, 38:25, 40:2, 40:19, 42:15, 43:3, 44:4, 44:11, 44:22, 45:6, 46:11, 46:15, 46:25, 49:19, 49:20, 51:23, 54:17, 58:7, 59:10, 59:23, 60:11, 61:5, 62:13, 62:16, 63:6, 63:17, 63:18, 63:25, 64:15, 64:16, 64:23, 65:7, 65:9, 65:15, 65:22, 66:7, 68:22, 69:3, 69:6, 70:22, 72:12, 72:13, 74:19, 75:2, 75:20, 76:20, 82:14, 83:19, 83:20, 84:4, 87:9, 87:22, 88:2, 89:7, 89:19, 91:7, 91:19, 91:23, 92:23, 95:25, 97:15, 99:10, 101:18, 101:23, 102:22, 103:16, 103:17, 108:7 answered [4] - 63:15, 64:14, 64:22,
0	2008 [4] - 8:17, 50:2, 52:12, 52:19 2009 [13] - 8:17, 33:11, 46:22, 49:24, 52:10, 52:14, 52:16, 82:20, 83:5, 84:9, 85:4, 86:3, 86:6 2010 [4] - 46:7, 49:6, 49:15, 49:17 2011 [3] - 1:14, 114:16, 116:19 22 [1] - 1:14 25 [2] - 35:11, 82:22 26th [1] - 116:19 27 [1] - 115:19 28 [1] - 115:20 2:30 [1] - 111:23	8 80 [1] - 115:21	9 9 [1] - 115:9 94 [1] - 115:22 9:30 [1] - 1:15	70:2 allowed [2] - 52:21, 103:15 almost [8] - 81:14, 89:16, 93:10, 93:11, 98:2, 108:18, 108:24, 109:6 ALSO [1] - 2:20 AMAYA [1] - 1:4 AMIR [1] - 1:4 amount [2] - 90:9, 112:22 amounts [1] - 91:12 AMSON [1] - 4:2 Amson [1] - 2:20 AND [3] - 3:4, 3:9, 3:13 angry [2] - 105:8, 105:11 annoyed [1] - 106:12 answer [112] - 5:5, 5:6, 6:20, 7:3, 9:14, 9:18, 13:24, 13:25, 14:9, 15:14, 16:5, 16:15, 16:21, 17:7, 17:17, 17:19, 18:19, 18:25, 19:5, 19:7, 19:8, 19:9, 19:14, 19:20, 20:21, 21:5, 23:12, 23:15, 23:24, 24:6, 24:12, 25:5, 25:8, 29:16, 29:17, 31:21, 31:24, 34:7, 36:8, 36:13, 36:14, 36:22, 37:4, 37:20, 38:7, 38:25, 40:2, 40:19, 42:15, 43:3, 44:4, 44:11, 44:22, 45:6, 46:11, 46:15, 46:25, 49:19, 49:20, 51:23, 54:17, 58:7, 59:10, 59:23, 60:11, 61:5, 62:13, 62:16, 63:6, 63:17, 63:18, 63:25, 64:15, 64:16, 64:23, 65:7, 65:9, 65:15, 65:22, 66:7, 68:22, 69:3, 69:6, 70:22, 72:12, 72:13, 74:19, 75:2, 75:20, 76:20, 82:14, 83:19, 83:20, 84:4, 87:9, 87:22, 88:2, 89:7, 89:19, 91:7, 91:19, 91:23, 92:23, 95:25, 97:15, 99:10, 101:18, 101:23, 102:22, 103:16, 103:17, 108:7 answered [4] - 63:15, 64:14, 64:22,
09-CV-5331 [1] - 1:10	2008 [4] - 8:17, 50:2, 52:12, 52:19 2009 [13] - 8:17, 33:11, 46:22, 49:24, 52:10, 52:14, 52:16, 82:20, 83:5, 84:9, 85:4, 86:3, 86:6 2010 [4] - 46:7, 49:6, 49:15, 49:17 2011 [3] - 1:14, 114:16, 116:19 22 [1] - 1:14 25 [2] - 35:11, 82:22 26th [1] - 116:19 27 [1] - 115:19 28 [1] - 115:20 2:30 [1] - 111:23	9 9 [1] - 115:9 94 [1] - 115:22 9:30 [1] - 1:15	A a.m [1] - 1:15 ability [2] - 4:6, 21:23 able [3] - 15:19, 72:2, 78:24 above-mentioned [1] - 1:22 absolutely [3] - 16:23, 91:10, 102:4 absurdity [1] - 102:13 acceptable [1] - 47:9 accepted [1] - 38:19 accident [3] - 39:18, 39:20, 40:6 accordance [1] - 49:4 according [2] - 29:21, 98:24 account [2] - 28:14, 91:12 accountant [5] -	70:2 allowed [2] - 52:21, 103:15 almost [8] - 81:14, 89:16, 93:10, 93:11, 98:2, 108:18, 108:24, 109:6 ALSO [1] - 2:20 AMAYA [1] - 1:4 AMIR [1] - 1:4 amount [2] - 90:9, 112:22 amounts [1] - 91:12 AMSON [1] - 4:2 Amson [1] - 2:20 AND [3] - 3:4, 3:9, 3:13 angry [2] - 105:8, 105:11 annoyed [1] - 106:12 answer [112] - 5:5, 5:6, 6:20, 7:3, 9:14, 9:18, 13:24, 13:25, 14:9, 15:14, 16:5, 16:15, 16:21, 17:7, 17:17, 17:19, 18:19, 18:25, 19:5, 19:7, 19:8, 19:9, 19:14, 19:20, 20:21, 21:5, 23:12, 23:15, 23:24, 24:6, 24:12, 25:5, 25:8, 29:16, 29:17, 31:21, 31:24, 34:7, 36:8, 36:13, 36:14, 36:22, 37:4, 37:20, 38:7, 38:25, 40:2, 40:19, 42:15, 43:3, 44:4, 44:11, 44:22, 45:6, 46:11, 46:15, 46:25, 49:19, 49:20, 51:23, 54:17, 58:7, 59:10, 59:23, 60:11, 61:5, 62:13, 62:16, 63:6, 63:17, 63:18, 63:25, 64:15, 64:16, 64:23, 65:7, 65:9, 65:15, 65:22, 66:7, 68:22, 69:3, 69:6, 70:22, 72:12, 72:13, 74:19, 75:2, 75:20, 76:20, 82:14, 83:19, 83:20, 84:4, 87:9, 87:22, 88:2, 89:7, 89:19, 91:7, 91:19, 91:23, 92:23, 95:25, 97:15, 99:10, 101:18, 101:23, 102:22, 103:16, 103:17, 108:7 answered [4] - 63:15, 64:14, 64:22,
1 1 [3] - 27:8, 27:11, 115:19 1-5 [1] - 1:12 10 [2] - 84:18, 84:20 10017 [1] - 2:10 11 [1] - 85:9 11716 [1] - 2:5 11717 [1] - 22:24 11th [1] - 82:21 138 [5] - 93:25, 94:13, 94:15, 94:18, 95:20 14 [1] - 85:4 15 [2] - 72:11, 107:17 15th [2] - 35:7, 35:9 16 [1] - 22:13 17-and-a-half [1] - 22:12 1969 [1] - 7:18 1998 [5] - 32:18, 38:21, 39:8, 41:19, 42:4 1:30 [1] - 111:23 1st [2] - 35:6, 35:9	2008 [4] - 8:17, 50:2, 52:12, 52:19 2009 [13] - 8:17, 33:11, 46:22, 49:24, 52:10, 52:14, 52:16, 82:20, 83:5, 84:9, 85:4, 86:3, 86:6 2010 [4] - 46:7, 49:6, 49:15, 49:17 2011 [3] - 1:14, 114:16, 116:19 22 [1] - 1:14 25 [2] - 35:11, 82:22 26th [1] - 116:19 27 [1] - 115:19 28 [1] - 115:20 2:30 [1] - 111:23	9 9 [1] - 115:9 94 [1] - 115:22 9:30 [1] - 1:15	A a.m [1] - 1:15 ability [2] - 4:6, 21:23 able [3] - 15:19, 72:2, 78:24 above-mentioned [1] - 1:22 absolutely [3] - 16:23, 91:10, 102:4 absurdity [1] - 102:13 acceptable [1] - 47:9 accepted [1] - 38:19 accident [3] - 39:18, 39:20, 40:6 accordance [1] - 49:4 according [2] - 29:21, 98:24 account [2] - 28:14, 91:12 accountant [5] -	70:2 allowed [2] - 52:21, 103:15 almost [8] - 81:14, 89:16, 93:10, 93:11, 98:2, 108:18, 108:24, 109:6 ALSO [1] - 2:20 AMAYA [1] - 1:4 AMIR [1] - 1:4 amount [2] - 90:9, 112:22 amounts [1] - 91:12 AMSON [1] - 4:2 Amson [1] - 2:20 AND [3] - 3:4, 3:9, 3:13 angry [2] - 105:8, 105:11 annoyed [1] - 106:12 answer [112] - 5:5, 5:6, 6:20, 7:3, 9:14, 9:18, 13:24, 13:25, 14:9, 15:14, 16:5, 16:15, 16:21, 17:7, 17:17, 17:19, 18:19, 18:25, 19:5, 19:7, 19:8, 19:9, 19:14, 19:20, 20:21, 21:5, 23:12, 23:15, 23:24, 24:6, 24:12, 25:5, 25:8, 29:16, 29:17, 31:21, 31:24, 34:7, 36:8, 36:13, 36:14, 36:22, 37:4, 37:20, 38:7, 38:25, 40:2, 40:19, 42:15, 43:3, 44:4, 44:11, 44:22, 45:6, 46:11, 46:15, 46:25, 49:19, 49:20, 51:23, 54:17, 58:7, 59:10, 59:23, 60:11, 61:5, 62:13, 62:16, 63:6, 63:17, 63:18, 63:25, 64:15, 64:16, 64:23, 65:7, 65:9, 65:15, 65:22, 66:7, 68:22, 69:3, 69:6, 70:22, 72:12, 72:13, 74:19, 75:2, 75:20, 76:20, 82:14, 83:19, 83:20, 84:4, 87:9, 87:22, 88:2, 89:7, 89:19, 91:7, 91:19, 91:23, 92:23, 95:25, 97:15, 99:10, 101:18, 101:23, 102:22, 103:16, 103:17, 108:7 answered [4] - 63:15, 64:14, 64:22,

<p>65:20 answering [5] - 16:23, 47:16, 49:22, 70:14, 75:11 answers [2] - 4:5, 5:22 anytime [1] - 111:11 appear [1] - 89:19 appeared [2] - 21:2, 24:9 apply [3] - 52:24, 53:5, 53:9 appropriate [2] - 47:12, 47:13 AREVALO [1] - 1:4 arrive [5] - 64:6, 97:22, 98:6, 107:16, 107:18 arrived [1] - 107:16 Article [1] - 1:20 Asphalt [12] - 42:22, 43:16, 45:4, 82:8, 85:16, 86:21, 93:8, 97:9, 98:5, 100:8, 100:16, 111:8 ASPHALT [1] - 1:11 asphalt [1] - 35:15 assertion [1] - 73:9 assist [3] - 23:10, 55:19, 67:20 assistance [2] - 66:21, 79:23 ASSOCIATES [1] - 2:4 assume [2] - 10:13, 58:17 assumed [2] - 6:21, 13:10 attention [2] - 93:5, 102:12 attorney [30] - 9:8, 9:11, 9:20, 10:2, 10:6, 15:5, 15:11, 15:25, 16:13, 16:17, 18:16, 20:4, 20:14, 20:20, 26:3, 30:21, 30:23, 31:3, 41:4, 54:13, 57:3, 58:4, 58:9, 58:18, 70:8, 74:13, 84:2, 88:5, 88:25, 91:3 attorney/client [11] - 9:15, 12:15, 16:22, 59:9, 60:13, 91:15, 91:21, 102:3, 102:10, 103:3, 103:14 attorneys [5] - 3:5, 71:10, 76:6, 76:10, 76:15 Attorneys [2] - 2:4,</p>	<p>2:9 August [1] - 7:18 authorized [1] - 3:16 available [1] - 66:25 Avenue [1] - 2:9 avoided [1] - 39:17 aware [2] - 16:3, 113:15</p> <p style="text-align: center;">B</p> <p>bad [1] - 26:18 bank [2] - 28:14, 76:12 bargaining [1] - 94:3 based [2] - 19:13, 44:15 basis [5] - 17:20, 25:12, 47:2, 47:3, 107:20 Bay [1] - 56:15 bear [1] - 30:2 became [6] - 22:14, 22:19, 46:3, 93:21, 94:22, 94:23 become [1] - 93:23 BEFORE [1] - 1:18 beginning [6] - 8:24, 32:17, 38:14, 42:4, 97:19, 103:22 belonged [1] - 93:3 benefits [8] - 52:17, 52:20, 52:24, 53:6, 53:10, 53:18, 53:19, 53:24 best [2] - 4:6, 67:25 between [7] - 3:5, 9:16, 17:22, 29:20, 50:10, 50:15, 75:24 beyond [1] - 12:17 big [1] - 75:19 bill [4] - 60:21, 65:16, 69:24, 76:3 billboard [1] - 99:20 billing [1] - 61:23 bills [6] - 15:20, 61:2, 61:9, 61:14, 74:2, 76:5, 81:8, 81:12 birth [1] - 7:16 bit [6] - 26:18, 41:12, 88:9, 97:16, 98:12, 104:3, 109:12 blood [1] - 116:14 Bohemia [2] - 1:16, 2:5 booklet [2] - 95:10, 95:12 books [1] - 77:20 bordering [1] - 63:24</p>	<p>borrow [1] - 37:24 boss [4] - 45:9, 96:10, 96:12 bothered [1] - 107:6 Boulevard [2] - 56:12, 56:14 boy [1] - 75:19 break [24] - 6:24, 7:2, 7:4, 26:11, 27:4, 30:20, 47:18, 47:20, 47:23, 48:2, 48:5, 49:11, 71:25, 80:4, 85:12, 88:7, 88:18, 88:24, 89:12, 89:13, 92:8, 108:22, 109:2, 109:6 breakfast [4] - 108:17, 108:21, 109:2, 109:6 breaks [2] - 84:2, 108:15 Brentwood [2] - 4:16, 22:23 Brian [1] - 96:13 bringing [1] - 94:21 Broadway [1] - 20:17 brother [2] - 104:13, 104:16 business [1] - 39:9 BY [3] - 2:6, 4:10, 115:3</p> <p style="text-align: center;">C</p> <p>camera [1] - 15:23 cameras [2] - 15:9, 15:17 cannot [3] - 6:15, 55:2, 55:7 capitulation [1] - 19:14 care [3] - 15:20, 103:23 CARLOS [1] - 1:5 case [4] - 14:20, 15:12, 47:7, 85:3 Case [1] - 1:9 cases [1] - 64:17 cash [22] - 32:8, 32:14, 32:20, 32:24, 33:4, 33:6, 33:9, 33:12, 33:13, 33:20, 33:23, 34:3, 40:16, 76:18, 77:15, 92:12, 92:14, 92:17, 92:21, 93:3, 93:12, 93:16 CASTILLO [1] - 1:6 cellphone [1] - 111:15</p>	<p>cellular [6] - 38:15, 38:17, 85:20, 85:22, 110:9, 110:11 cement [1] - 93:11 certification [1] - 3:7 certify [2] - 116:7, 116:13 cetera [1] - 111:19 chambers [1] - 66:14 chance [1] - 96:9 CHANGE [10] - 117:6, 117:8, 117:10, 117:12, 117:14, 117:16, 117:18, 117:20, 117:22, 117:24 changes [1] - 117:3 changing [1] - 104:3 characterization [1] - 35:18 charge [5] - 43:22, 45:10, 59:7, 63:11, 87:12 charged [3] - 61:20, 62:4, 62:9 cheaper [2] - 39:13, 39:14 check [25] - 25:24, 26:2, 27:18, 27:19, 27:23, 28:13, 32:14, 32:25, 33:2, 33:12, 34:4, 43:6, 56:24, 76:11, 76:13, 76:15, 86:8, 92:21, 93:2, 105:25, 106:2, 106:22, 106:23, 107:24 checking [4] - 87:12, 105:15, 105:16, 105:23 checks [5] - 30:15, 43:14, 43:16, 43:19, 76:9 chief [1] - 110:18 child [3] - 22:16, 57:15, 57:19 children [4] - 22:8, 22:11, 22:17, 77:20 choice [3] - 59:13, 89:10, 91:9 chooses [2] - 79:13, 79:15 CHRISTOPHER [1] - 1:11 City [1] - 98:12 Civil [1] - 1:20 claim [2] - 58:19, 92:3 claimed [1] - 103:20 claiming [1] - 105:13</p>	<p>Clarification [3] - 43:8, 77:11, 109:4 clarification [1] - 43:13 clarify [2] - 59:22, 68:10 clearly [1] - 69:6 client [5] - 9:17, 18:24, 75:21, 80:6, 91:13 clients [2] - 55:3, 55:8 clogging [1] - 68:13 coffee [1] - 108:18 cold [5] - 35:10, 35:15, 35:21, 36:5, 36:19 collect [2] - 53:17, 53:23 collecting [1] - 54:7 collective [1] - 94:3 colloquy [1] - 78:11 coming [1] - 43:16 commit [1] - 114:2 committed [1] - 112:17 committing [1] - 95:23 common [1] - 96:25 communicate [2] - 111:7, 111:16 communicated [1] - 111:12 communicating [1] - 69:13 communication [1] - 68:15 communications [1] - 114:4 company [6] - 35:2, 43:10, 43:21, 106:14, 110:22, 111:2 compel [1] - 54:20 competent [1] - 75:15 complain [4] - 87:3, 100:7, 101:5, 101:14 complained [2] - 101:11, 101:12 complaining [2] - 86:19, 86:24 complaint [15] - 59:17, 69:20, 70:3, 73:8, 81:22, 85:3, 85:17, 86:15, 86:21, 91:11, 91:24, 100:16, 101:11, 103:5 complicates [1] - 71:17 complies [5] - 27:14,</p>
---	---	--	--	--

<p>28:9, 29:7, 80:19, 84:19</p> <p>computer [2] - 87:11, 107:25</p> <p>concept [1] - 103:5</p> <p>concluded [1] - 72:23</p> <p>conclusion [1] - 54:14</p> <p>conditions [2] - 94:7, 94:12</p> <p>condolences [1] - 22:5</p> <p>conduct [1] - 73:24</p> <p>conducted [1] - 112:23</p> <p>confer [1] - 16:13</p> <p>conference [2] - 68:8, 78:10</p> <p>confidential [4] - 12:16, 48:19, 112:2, 112:5</p> <p>confidentiality [1] - 112:6</p> <p>confuse [1] - 64:5</p> <p>confused [5] - 41:12, 44:18, 59:18, 59:20, 64:4</p> <p>confusion [3] - 44:9, 44:13, 44:15</p> <p>connection [2] - 57:11, 57:12</p> <p>consequence [1] - 11:20</p> <p>consequences [1] - 47:6</p> <p>consider [1] - 23:21</p> <p>considered [1] - 106:14</p> <p>content [3] - 17:10, 19:3, 19:9</p> <p>continuation [2] - 10:24, 12:9</p> <p>continue [7] - 23:14, 26:18, 27:2, 35:12, 44:21, 72:3, 73:21</p> <p>continued [2] - 12:10, 113:17</p> <p>continues [1] - 67:22</p> <p>continuing [1] - 26:16</p> <p>contributions [1] - 94:17</p> <p>control [1] - 75:19</p> <p>conversation [3] - 17:11, 20:20, 20:25</p> <p>copies [1] - 76:5</p> <p>copy [16] - 9:7, 9:10, 9:20, 9:25, 10:5, 10:12, 10:14, 10:16,</p>	<p>11:5, 11:8, 12:4, 12:6, 67:19, 86:15, 95:12, 115:9</p> <p>corner [13] - 15:11, 15:25, 16:12, 16:18, 18:6, 18:16, 19:16, 20:19, 20:25, 31:5, 31:10, 31:15, 31:17</p> <p>CORP [2] - 1:11</p> <p>Corp [1] - 66:18</p> <p>Corporation [2] - 42:22, 43:17</p> <p>correct [48] - 16:9, 21:24, 24:15, 29:14, 30:6, 30:13, 31:19, 34:11, 34:19, 36:11, 36:20, 37:10, 37:13, 38:23, 39:10, 40:7, 42:4, 49:8, 52:11, 53:21, 53:25, 54:3, 61:3, 61:10, 61:12, 61:13, 61:21, 62:11, 63:13, 74:24, 76:18, 77:2, 81:19, 81:24, 82:10, 86:6, 86:16, 86:22, 88:18, 100:17, 104:14, 104:22, 105:9, 105:11, 109:18, 109:22, 110:6, 110:12</p> <p>correcting [1] - 25:16</p> <p>Counsel [4] - 41:6, 55:6, 55:9, 55:12</p> <p>counsel [4] - 54:22, 65:2, 69:22, 69:25</p> <p>Counselor [12] - 10:9, 10:20, 11:15, 11:18, 12:11, 24:19, 46:17, 47:10, 48:3, 59:12, 65:11, 65:25</p> <p>counselor [1] - 11:12</p> <p>count [1] - 112:24</p> <p>country [4] - 8:12, 8:14, 8:19, 8:22</p> <p>couple [3] - 37:5, 45:13, 45:15</p> <p>course [2] - 5:23, 70:19</p> <p>Court [8] - 1:24, 3:18, 47:16, 54:21, 66:12, 73:11, 80:6, 103:11</p> <p>court [5] - 5:24, 6:15, 21:18, 69:16, 102:20</p> <p>COURT [2] - 1:2, 71:7</p> <p>cup [1] - 108:18</p> <p>current [2] - 4:15, 111:2</p>	<p>D</p> <p>daily [2] - 25:12, 107:20</p> <p>date [8] - 7:16, 15:7, 27:9, 28:25, 64:8, 64:20, 80:11, 95:3</p> <p>dates [2] - 31:9, 87:24</p> <p>daughter [2] - 22:13, 22:15</p> <p>day's [2] - 25:15, 64:8</p> <p>days [9] - 10:19, 10:22, 25:19, 31:16, 31:23, 69:12, 90:13, 91:2, 91:4</p> <p>deals [1] - 94:13</p> <p>December [6] - 22:15, 35:11, 82:9, 82:22, 85:4, 86:3</p> <p>decision [2] - 104:9</p> <p>declaration [1] - 50:14</p> <p>deduct [1] - 92:4</p> <p>deemed [1] - 48:18</p> <p>defend [1] - 58:19</p> <p>defendant [1] - 79:19</p> <p>Defendants [3] - 1:13, 1:20, 2:9</p> <p>defendants [1] - 85:4</p> <p>DEFENDANTS' [1] - 115:17</p> <p>Defendants' [9] - 27:8, 27:11, 28:24, 29:4, 29:25, 80:10, 80:13, 95:2, 95:5</p> <p>defendants' [2] - 73:24, 112:25</p> <p>delay [1] - 113:5</p> <p>deliver [2] - 61:7, 85:22</p> <p>delivered [5] - 58:21, 60:14, 85:19, 85:20, 85:25</p> <p>demand [6] - 41:7, 80:21, 80:24, 86:2, 113:8, 113:14</p> <p>demands [1] - 11:19</p> <p>depended [1] - 98:8</p> <p>depose [1] - 113:2</p> <p>deposited [2] - 28:14, 28:18</p> <p>deposition [43] - 3:14, 5:15, 6:25, 10:25, 11:6, 12:9, 12:25, 13:4, 14:12, 14:16, 15:6, 16:19, 17:3, 17:9, 18:5,</p>	<p>18:17, 19:18, 20:2, 20:3, 20:7, 20:13, 21:8, 21:16, 48:4, 48:10, 48:13, 54:14, 66:20, 67:11, 67:14, 70:19, 73:15, 73:16, 73:21, 78:19, 79:6, 89:4, 89:10, 89:15, 103:22, 112:14, 112:21, 112:23</p> <p>depositions [2] - 71:9, 113:5</p> <p>Depot [4] - 39:12, 39:16, 40:11, 115:10</p> <p>DESCRIPTION [2] - 115:8, 115:17</p> <p>designation [2] - 49:3, 112:8</p> <p>desk [1] - 58:21</p> <p>destroyed [1] - 40:17</p> <p>destruction [1] - 106:14</p> <p>determine [3] - 11:2, 91:11, 112:6</p> <p>DF [2] - 96:16, 96:18</p> <p>dialog [2] - 113:6, 113:10</p> <p>different [2] - 24:9, 89:11</p> <p>difficult [2] - 35:5, 87:23</p> <p>directive [1] - 79:3</p> <p>directly [4] - 34:18, 98:25, 99:2, 99:8</p> <p>disclose [4] - 19:9, 75:13, 75:17, 75:23</p> <p>disclosure [1] - 12:15</p> <p>disconnect [4] - 105:18, 105:20, 106:4, 106:6</p> <p>disconnected [1] - 105:24</p> <p>discrepancy [2] - 41:21, 49:12</p> <p>discuss [4] - 16:18, 20:7, 84:2, 112:15</p> <p>discussed [7] - 17:2, 17:3, 17:6, 17:10, 17:14, 48:6, 112:11</p> <p>discussions [1] - 112:18</p> <p>dishonest [1] - 89:19</p> <p>dishonesty [1] - 73:10</p> <p>dispatcher [1] - 111:12</p> <p>disposal [1] - 10:10</p> <p>dispute [2] - 66:25, 112:10</p>	<p>disregard [1] - 23:13</p> <p>DISTRICT [2] - 1:2, 1:2</p> <p>divulge [1] - 19:3</p> <p>doctor [1] - 8:10</p> <p>document [28] - 27:7, 27:10, 27:15, 27:17, 28:8, 28:23, 29:3, 29:5, 29:8, 29:10, 29:14, 29:21, 30:5, 30:6, 80:9, 80:13, 80:20, 80:25, 81:5, 84:18, 94:2, 94:7, 94:25, 95:4, 95:6, 95:8, 99:15, 99:16</p> <p>Document [4] - 115:19, 115:20, 115:21, 115:22</p> <p>documentation [3] - 9:19, 11:10, 77:5</p> <p>documents [7] - 24:3, 24:13, 40:25, 41:7, 41:8, 56:24, 115:11</p> <p>DOES [1] - 1:12</p> <p>doings [1] - 30:10</p> <p>done [3] - 82:23, 86:9, 100:10</p> <p>double [1] - 97:10</p> <p>down [3] - 5:25, 6:16, 27:24</p> <p>drank [2] - 8:6, 8:8</p> <p>drivers [1] - 107:4</p> <p>driving [2] - 94:13, 110:22</p> <p>drove [1] - 38:3</p> <p>dues [1] - 94:15</p> <p>duly [3] - 4:3, 4:8, 116:9</p> <p>during [13] - 6:25, 12:25, 47:20, 48:5, 48:10, 48:13, 51:14, 53:19, 70:19, 79:5, 84:2, 88:24, 89:13</p>
E				
<p>early [1] - 97:22</p> <p>EASTERN [1] - 1:2</p> <p>eat [1] - 98:2</p> <p>EDWIN [1] - 1:5</p> <p>effect [2] - 3:17, 21:17</p> <p>eight [7] - 22:14, 22:20, 65:20, 66:8, 68:20, 70:20, 108:10</p> <p>eighth [1] - 68:21</p> <p>either [5] - 33:23,</p>				

<p>35:9, 45:18, 62:8, 116:14 El [3] - 7:20, 7:22, 9:3 eliciting [1] - 102:2 eligibility [1] - 11:11 employees [1] - 36:11 employer [1] - 96:15 employment [4] - 42:9, 94:8, 94:12, 100:8 end [2] - 8:23, 25:14 English [8] - 4:4, 4:5, 4:22, 7:11, 7:13, 29:11, 29:13, 111:18 ensure [1] - 5:7 entered [2] - 16:6, 16:8 entire [1] - 33:18 entitled [7] - 17:6, 17:8, 17:11, 17:13, 48:5, 53:4, 91:19 equipment [5] - 37:18, 37:24, 76:25, 77:6, 94:14 Ernst [1] - 2:20 ERNST [1] - 4:2 ERRATA [1] - 117:2 error [1] - 31:4 ESCALANTE [1] - 1:5 ESQ [2] - 2:6, 2:11 Essentially [1] - 69:18 et [1] - 111:19 ex [2] - 57:25, 58:2 ex-wife [2] - 57:25, 58:2 exact [2] - 87:24 exactly [6] - 31:8, 71:16, 78:25, 83:3, 83:16, 96:3 EXAMINATION [3] - 1:18, 4:10, 115:3 examined [1] - 4:9 except [2] - 3:10, 22:19 excuse [1] - 68:5 Exhibit [11] - 27:8, 27:11, 28:24, 29:4, 29:25, 80:10, 80:13, 84:13, 91:25, 95:2, 95:5 EXHIBITS [1] - 115:16 expensive [2] - 33:2, 34:22 explain [13] - 23:16, 37:21, 37:22, 38:6,</p>	<p>41:20, 49:12, 49:14, 80:5, 82:13, 82:15, 83:20, 83:24, 90:15 explained [3] - 13:13, 24:10, 29:23 explanation [2] - 43:19, 83:21 exposes [1] - 47:5 extent [1] - 108:19 extra [1] - 68:14 eyes [1] - 13:11</p> <p style="text-align: center;">F</p> <p>fact [2] - 20:2, 31:2 factual [1] - 73:9 fair [5] - 33:22, 45:11, 45:18, 45:25, 46:3 FAJARDO [1] - 1:4 false [1] - 73:7 falsely [1] - 21:17 familiar [2] - 94:2, 94:6 familiarity [1] - 11:19 familiarize [2] - 12:23, 67:21 family [4] - 15:20, 21:24, 22:3, 103:23 far [3] - 81:18, 92:10, 112:23 fast [1] - 107:4 February [3] - 8:15, 8:16, 8:23 Federal [2] - 47:11, 67:19 feeding [1] - 70:6 fees [5] - 57:10, 63:4, 69:20, 74:14, 74:16 felt [1] - 26:18 few [10] - 10:19, 10:22, 26:19, 52:25, 62:19, 63:3, 71:25, 97:12, 99:12, 111:18 Fifth [1] - 2:9 fifth [1] - 64:12 fight [1] - 106:18 file [19] - 46:4, 46:6, 46:21, 49:7, 49:9, 49:11, 49:15, 49:17, 49:24, 50:2, 50:4, 50:7, 50:11, 51:8, 51:11, 51:18, 52:17, 52:20, 101:10 filed [7] - 53:18, 53:19, 58:3, 82:25, 83:4, 83:14, 100:15 filing [1] - 3:6 fill [1] - 109:25</p>	<p>filled [1] - 78:25 final [2] - 12:12, 12:18 finally [1] - 20:17 fine [2] - 69:10, 72:7 finish [1] - 49:13 finished [5] - 21:5, 31:24, 85:14, 87:22, 87:25 first [6] - 12:12, 12:18, 15:2, 22:12, 43:14, 45:13 Five [2] - 47:23, 48:2 five [14] - 12:21, 13:15, 22:9, 26:11, 47:18, 63:23, 64:3, 76:21, 77:25, 85:12, 88:18, 88:23, 108:19, 109:14 five-minute [4] - 26:11, 47:18, 85:12, 88:18 Five-minute [2] - 47:23, 48:2 fix [1] - 106:19 follow [5] - 11:3, 36:17, 70:4, 91:14, 91:18 follow-up [1] - 11:3 following [5] - 19:12, 25:2, 78:11, 117:3, 117:4 follows [1] - 4:9 FOR [1] - 115:7 force [1] - 3:17 foreman [3] - 110:19, 111:4, 111:6 form [38] - 3:10, 12:14, 13:23, 14:8, 14:13, 14:18, 14:23, 19:6, 32:21, 36:12, 37:19, 38:4, 38:24, 39:25, 40:8, 40:18, 42:8, 42:14, 42:19, 43:2, 45:5, 45:12, 45:22, 49:18, 51:15, 51:20, 54:4, 57:20, 58:6, 58:16, 60:3, 61:4, 61:22, 62:12, 76:19, 79:8, 103:10, 103:12 forth [2] - 44:16, 116:9 forum [1] - 12:18 forward [1] - 56:17 four [4] - 22:10, 76:21, 77:25, 87:20 fraudulent [1] - 95:23 Friday [5] - 32:4,</p>	<p>32:8, 87:21, 90:25, 92:11 Fridays [1] - 25:14 friend [1] - 72:25 friends [8] - 32:23, 33:3, 34:10, 34:13, 34:17, 37:11, 37:14, 53:3 front [3] - 84:13, 84:14, 91:25 fuel [2] - 109:21, 110:5 full [2] - 4:12, 7:14 furnish [1] - 26:8 FURTHER [2] - 3:9, 3:13 fuse [1] - 106:17 future [5] - 61:24, 63:10, 64:18, 81:15, 81:17</p> <p style="text-align: center;">G</p> <p>GALEANO [1] - 1:6 GARCIA [1] - 1:4 gasoline [1] - 110:2 girl [1] - 22:19 given [10] - 27:19, 33:22, 38:9, 59:24, 63:20, 64:16, 109:17, 109:21, 110:16, 116:12 glad [1] - 73:4 Goldberg [16] - 60:7, 60:17, 60:21, 61:15, 61:19, 62:24, 64:9, 66:17, 67:12, 67:15, 68:17, 72:5, 78:20, 79:7, 101:14, 112:11 GOLDBERG [209] - 2:8, 2:11, 9:12, 10:15, 10:18, 10:21, 11:7, 11:13, 11:16, 11:22, 12:2, 13:3, 13:8, 13:23, 14:8, 14:13, 14:18, 14:23, 15:13, 16:4, 16:14, 16:20, 17:5, 17:18, 17:21, 18:7, 18:13, 18:18, 18:23, 19:19, 20:5, 23:11, 23:23, 24:5, 24:16, 24:20, 26:10, 28:16, 29:15, 31:20, 32:21, 33:14, 34:6, 35:16, 36:7, 36:12, 36:21, 37:3, 37:19, 38:4, 38:11, 38:24, 39:25, 40:8, 40:18, 41:11, 42:8, 42:14,</p>	<p>42:19, 43:2, 43:23, 44:2, 44:4, 44:7, 44:14, 44:19, 45:5, 45:12, 45:22, 46:9, 46:14, 46:19, 46:23, 47:3, 47:17, 47:21, 47:25, 48:7, 48:9, 48:12, 48:16, 49:5, 49:18, 51:15, 51:20, 54:4, 54:16, 55:2, 55:7, 55:10, 55:14, 57:20, 58:6, 58:16, 59:8, 59:14, 59:21, 60:3, 60:10, 61:4, 61:22, 62:12, 63:14, 63:22, 64:11, 64:21, 64:24, 65:4, 65:8, 65:13, 65:19, 65:23, 66:4, 68:18, 70:15, 72:7, 72:21, 73:2, 73:4, 73:12, 74:5, 74:8, 74:18, 74:25, 75:5, 75:9, 75:12, 75:16, 75:22, 76:19, 77:17, 77:22, 78:22, 79:20, 80:2, 80:16, 81:10, 81:20, 82:4, 82:11, 82:16, 83:2, 83:11, 84:11, 85:11, 86:9, 86:13, 87:8, 87:19, 88:8, 88:15, 89:5, 89:20, 90:3, 90:10, 91:6, 91:14, 91:20, 92:5, 92:22, 94:4, 94:9, 95:24, 96:7, 97:11, 97:18, 97:24, 98:7, 98:16, 99:9, 99:22, 100:18, 101:7, 101:16, 101:19, 101:22, 102:2, 102:7, 102:15, 102:23, 103:2, 103:6, 103:13, 103:24, 104:7, 104:15, 104:23, 105:5, 105:12, 105:21, 106:15, 106:20, 107:7, 108:6, 108:13, 108:23, 109:3, 109:10, 109:19, 109:23, 110:3, 110:7, 110:13, 110:17, 110:23, 111:10, 111:24, 113:3, 114:5 Goldberg's [2] - 59:25, 61:9 governs [1] - 94:7 GPS [13] - 20:16, 105:9, 105:18, 105:20, 105:23, 106:3, 106:4, 106:7,</p>
---	--	---	---	--

106:19, 106:22, 106:25, 111:25, 112:4 grease [2] - 97:17, 97:23 great [2] - 68:16, 78:23 green [1] - 41:22 group [5] - 36:16, 36:17, 99:6, 110:8, 110:16 groups [2] - 36:15, 36:18 grunt [1] - 6:2 grunted [1] - 6:9	hi [2] - 67:6, 78:14 Highway [2] - 1:16, 2:5 hire [1] - 58:4 hired [2] - 58:10, 58:18 Home [4] - 39:12, 39:16, 40:11, 115:10 home [7] - 23:4, 23:7, 23:10, 23:19, 28:3, 39:16, 94:21 honesty [1] - 72:15 hoping [1] - 113:11 hour [3] - 97:21, 107:15, 112:25 hours [6] - 79:14, 108:4, 108:8, 108:9, 108:10, 108:14 house [2] - 15:21, 27:25 huddled [4] - 15:11, 18:6, 18:16, 19:16 hum [1] - 6:10 hung [2] - 105:14, 105:17	indicating [1] - 58:11 individual [1] - 113:2 industry [3] - 25:9, 110:15, 110:20 information [5] - 12:16, 30:23, 57:3, 57:5, 102:10 initiating [1] - 85:3 INSERT [1] - 57:7 INSERTS [1] - 115:14 installing [1] - 105:9 instance [1] - 73:10 instruct [13] - 9:13, 9:17, 16:21, 17:19, 18:24, 46:10, 46:24, 54:17, 60:11, 89:6, 91:7, 91:22, 101:23 instructed [1] - 69:5 instructing [4] - 46:14, 59:10, 59:22, 75:16 insult [3] - 75:15, 75:18, 75:21 insurance [3] - 39:17, 39:23, 77:21 interested [1] - 116:16 interfere [1] - 47:15 interpret [5] - 4:3, 5:4, 5:6, 7:9, 75:7 interpreted [1] - 5:3 Interpreter [3] - 2:20, 4:2, 4:8 interpreter [8] - 5:4, 7:8, 7:14, 10:10, 68:12, 69:14, 69:15, 71:17 INTERPRETER [16] - 5:12, 14:4, 25:4, 25:10, 25:16, 31:7, 43:8, 43:12, 63:5, 77:10, 81:25, 90:14, 92:7, 100:19, 100:23, 109:4 interrupt [2] - 75:11, 75:14 involved [1] - 57:13 involves [1] - 19:6 IS [3] - 3:4, 3:9, 3:13 issue [3] - 10:3, 22:7, 72:24 issued [1] - 43:15 issues [2] - 71:9, 79:17 IT [3] - 3:4, 3:9, 3:13	J Jacqueline [1] - 2:21 January [1] - 82:21 Javier [2] - 109:15 JAVIER [1] - 1:5 job [12] - 14:2, 15:18, 15:19, 21:23, 37:15, 38:3, 98:25, 99:2, 99:8, 100:5, 100:12, 100:14 jobs [10] - 35:21, 37:6, 37:8, 37:18, 37:23, 76:18, 76:22, 77:16, 82:23, 96:21 JOHN [1] - 1:12 join [1] - 78:4 joined [1] - 45:21 JOSE [2] - 1:4, 1:6 JUAN [1] - 1:6 Judge [1] - 71:12 judge [15] - 13:6, 17:16, 18:22, 18:23, 66:3, 66:5, 66:9, 66:23, 67:23, 69:9, 69:10, 71:2, 78:24, 102:6 Judge's [1] - 66:14 judge's [2] - 66:20, 79:3 july [1] - 1:14 July [1] - 116:19 jump [2] - 69:9, 69:11 June [2] - 22:14, 22:16	LaMendola [3] - 1:23, 116:5, 116:22 language [4] - 68:11, 74:3, 74:6, 111:16 last [8] - 8:5, 8:9, 22:15, 30:20, 56:5, 65:11, 65:13, 104:17 late [1] - 33:11 Lauren [2] - 66:17, 103:8 LAUREN [2] - 2:8, 2:11 lavatory [1] - 80:5 Law [1] - 1:21 LAW [14] - 2:8, 67:4, 67:8, 68:2, 68:5, 68:16, 70:25, 71:14, 71:24, 72:16, 78:15, 78:20, 78:23, 79:24 laws [3] - 95:10, 97:20, 100:5 lawsuit [16] - 48:22, 60:2, 60:8, 60:22, 61:3, 61:10, 61:16, 61:21, 69:21, 74:14, 74:17, 81:8, 82:24, 83:4, 83:14, 84:10 lawsuits [1] - 57:12 lawyer [6] - 15:15, 16:8, 19:17, 20:8, 20:10, 60:15 lawyer's [1] - 19:13 lawyers [1] - 58:25 layer [1] - 68:14 leader [1] - 110:16 leaders [1] - 110:8 learn [1] - 7:12 least [2] - 112:24, 114:3 leave [4] - 77:8, 77:12, 78:8, 78:18 left [5] - 21:3, 42:9, 45:17, 68:7, 78:9 legal [12] - 57:10, 60:20, 61:2, 61:9, 63:4, 69:20, 73:25, 74:14, 74:16, 81:8, 81:12, 103:5 lend [2] - 23:9, 23:18 LERLY [1] - 1:6 less [3] - 33:3, 46:3, 85:19 letter [3] - 96:2, 96:5, 96:8 letting [3] - 73:5, 73:12, 73:13 level [1] - 7:10 license [1] - 40:14 life [1] - 104:2 limit [2] - 72:9, 72:10
H half [5] - 42:10, 51:4, 97:14, 97:21, 104:19 half-an-hour [1] - 97:21 halfway [9] - 15:10, 15:25, 16:13, 16:18, 18:6, 18:15, 19:17, 20:19, 20:25 hampering [1] - 70:13 hand [1] - 116:19 handle [2] - 66:25, 67:25 happy [5] - 12:21, 13:16, 14:2, 15:16, 20:23 harassing [1] - 47:4 harassment [4] - 63:24, 68:23, 69:8, 70:16 hasty [1] - 49:21 head [3] - 5:25, 7:7, 104:11 health [1] - 77:21 hear [1] - 31:8 held [1] - 1:22 Helene [1] - 106:2 HELENE [1] - 1:12 hello [1] - 78:15 help [6] - 22:21, 59:19, 78:2, 104:21 helping [1] - 103:23 hereby [2] - 3:7, 116:6 HEREBY [1] - 3:4 herein [4] - 1:19, 3:6, 4:3, 4:7 hereinbefore [1] - 116:9 hereunto [1] - 116:18 herself [1] - 67:21	I Ian [1] - 62:2 idea [1] - 90:19 identification [4] - 27:8, 28:24, 80:10, 95:2 identified [3] - 27:11, 29:4, 80:13 immediately [1] - 10:13 important [1] - 93:6 IN [1] - 116:18 inappropriate [1] - 67:17 inclined [1] - 52:4 include [1] - 91:25 income [15] - 46:4, 46:6, 46:21, 49:7, 49:15, 49:17, 50:12, 51:8, 51:11, 51:18, 54:8, 55:17, 77:16, 93:17, 115:12 incorrect [1] - 102:5 incur [2] - 73:25, 81:12 incurred [6] - 57:10, 61:2, 69:20, 73:25, 74:13, 81:7 INDEX [1] - 115:2 indicated [3] - 15:24, 65:24, 68:24 indicating [1] - 30:15	K Karen [1] - 1:23 KAREN [2] - 116:5, 116:22 keep [7] - 25:15, 25:19, 25:20, 69:4, 100:11, 107:11, 107:19 KEVIN [1] - 1:6 knows [6] - 19:2, 75:20, 76:22, 90:22, 98:3, 107:8	L laborer [2] - 97:2 laid [10] - 35:23, 36:4, 36:19, 82:9, 83:5, 84:9, 85:15, 86:5, 86:14, 86:20	

<p>LINE [1] - 117:5 line [7] - 38:15, 38:16, 48:17, 78:16, 78:18, 85:14, 86:10 list [1] - 9:23 Listen [1] - 44:7 live [2] - 22:17, 70:13 lived [2] - 22:25, 57:23 lives [1] - 22:20 loan [6] - 28:2, 28:5, 28:21, 30:17, 89:24, 92:18 Local [4] - 93:25, 94:15, 94:18, 95:20 locally [1] - 98:11 locate [1] - 10:21 located [2] - 56:11, 56:12 look [12] - 25:24, 27:12, 29:5, 40:25, 59:20, 60:15, 71:18, 74:12, 80:14, 84:22, 88:13, 105:19 looking [1] - 59:18 lost [1] - 20:17 Lou [1] - 23:9 Louie [3] - 42:23, 105:25, 106:2 louie [1] - 28:6 Louis [10] - 2:20, 28:21, 33:7, 33:10, 45:8, 45:11, 58:12, 86:22, 87:11, 111:8 LOUIS [1] - 1:11 lunch [4] - 108:15, 108:17, 108:19, 111:21 luncheon [1] - 111:22 lunchtime [1] - 98:2 lying [3] - 61:3, 61:21, 62:10</p> <p>M</p> <p>machine [3] - 97:3, 97:4, 97:5 machinery [1] - 96:19 magistrate [1] - 66:24 majority [5] - 36:23, 40:20, 107:21, 108:8, 108:12 man [1] - 106:19 manual [1] - 95:9 March [4] - 8:24, 35:6, 35:9</p>	<p>MARCUS [1] - 1:6 mark [1] - 111:24 marked [6] - 27:7, 28:23, 31:6, 80:9, 94:25, 112:4 Marley [5] - 67:2, 67:5, 67:6, 78:14, 79:22 marriage [1] - 116:14 MARTINEZ [1] - 1:5 MATERIAL [2] - 73:7, 98:21 matter [6] - 21:13, 66:19, 67:13, 112:15, 112:19, 116:17 MAYNOR [1] - 1:4 McEvilly [2] - 87:2, 87:18 mean [8] - 32:11, 35:20, 53:14, 53:16, 71:15, 72:10, 73:18, 76:14 means [2] - 94:12, 107:13 mechanic [1] - 77:8 mechanism [1] - 48:25 medications [1] - 8:3 meet [1] - 99:8 meeting [1] - 15:24 member [6] - 93:21, 93:24, 94:23, 95:11, 95:19 mendez [1] - 114:9 MENDEZ [4] - 1:5, 1:18, 4:7, 114:13 Mendez [26] - 4:14, 4:18, 7:17, 11:25, 13:18, 19:7, 19:19, 19:24, 21:7, 24:2, 26:15, 27:2, 41:12, 42:17, 47:24, 49:6, 57:9, 64:6, 74:12, 78:7, 80:12, 83:18, 88:17, 93:4, 93:20, 115:4 Mendez's [3] - 48:18, 112:21, 115:9 mention [1] - 110:25 mentioned [2] - 1:22, 26:17 met [2] - 16:17, 62:2 middle [1] - 66:19 might [1] - 89:18 mine [2] - 37:15, 77:7 minute [8] - 13:15, 26:11, 47:18, 47:23, 48:2, 80:4, 85:12, 88:18</p>	<p>minutes [9] - 12:21, 26:20, 26:21, 26:23, 63:3, 71:25, 88:23, 107:17, 108:19 mischaracterizatio n [2] - 54:5, 88:9 mischaracterizing [1] - 51:21 misstating [2] - 24:22, 35:17 mistake [2] - 4:24, 5:2 mistakes [1] - 5:7 misunderstanding [2] - 57:14, 57:22 moment [1] - 68:6 Monday [6] - 92:11, 113:7, 113:9, 114:3, 114:4, 114:8 money [23] - 23:9, 23:18, 45:25, 46:2, 61:15, 61:20, 62:4, 62:7, 62:21, 62:24, 63:21, 64:10, 69:25, 76:12, 90:24, 94:21, 100:13, 101:3, 101:13, 101:15, 103:20, 109:21 month [5] - 35:3, 83:8, 90:17, 90:18, 94:19 monthly [1] - 29:22 months [6] - 35:12, 36:5, 52:22, 53:24, 87:20 morning [4] - 4:18, 4:19, 20:10, 20:14 mornings [1] - 98:22 mortgage [1] - 28:19 most [1] - 108:5 mostly [1] - 98:17 mother [1] - 22:20 motion [1] - 54:20 move [2] - 39:15, 73:17 MR [109] - 4:11, 5:10, 9:24, 10:9, 10:17, 10:19, 10:23, 11:12, 11:15, 11:18, 11:23, 12:11, 13:7, 13:10, 16:25, 17:8, 17:20, 17:23, 18:11, 18:21, 19:11, 20:6, 24:18, 24:23, 25:7, 26:12, 26:22, 31:7, 40:24, 41:6, 43:25, 44:3, 44:5, 44:12, 44:17, 46:12, 46:16, 47:2, 47:8, 47:19, 48:3, 48:8, 48:11, 48:23,</p>	<p>54:12, 54:22, 55:6, 55:9, 55:12, 56:25, 59:11, 59:16, 63:8, 65:2, 65:6, 65:11, 65:25, 66:15, 67:2, 67:6, 67:10, 68:4, 68:9, 69:11, 71:5, 71:8, 71:22, 72:2, 72:14, 72:19, 72:24, 73:3, 73:6, 73:23, 74:7, 74:9, 75:7, 75:10, 75:14, 75:18, 78:7, 78:14, 78:17, 79:18, 79:22, 80:3, 80:18, 82:3, 85:13, 86:11, 88:4, 88:13, 89:8, 91:8, 91:17, 92:9, 100:21, 101:20, 101:24, 102:4, 102:11, 102:17, 102:25, 103:4, 103:8, 111:20, 112:3, 114:2, 114:7 MS [207] - 9:12, 10:15, 10:18, 10:21, 11:7, 11:13, 11:16, 11:22, 12:2, 13:3, 13:8, 13:23, 14:8, 14:13, 14:18, 14:23, 15:13, 16:4, 16:14, 16:20, 17:5, 17:18, 17:21, 18:7, 18:13, 18:18, 18:23, 19:19, 20:5, 23:11, 23:23, 24:5, 24:16, 24:20, 26:10, 28:16, 29:15, 31:20, 32:21, 33:14, 34:6, 35:16, 36:7, 36:12, 36:21, 37:3, 37:19, 38:4, 38:11, 38:24, 39:25, 40:8, 40:18, 41:11, 42:8, 42:14, 42:19, 43:2, 43:23, 44:2, 44:4, 44:7, 44:14, 44:19, 45:5, 45:12, 45:22, 46:9, 46:14, 46:19, 46:23, 47:3, 47:17, 47:21, 47:25, 48:7, 48:9, 48:12, 48:16, 49:5, 49:18, 51:15, 51:20, 54:4, 54:16, 55:2, 55:7, 55:10, 55:14, 57:20, 58:6, 58:16, 59:8, 59:14, 59:21, 60:3, 60:10, 61:4, 61:22, 62:12, 63:14, 63:22, 64:11, 64:21, 64:24, 65:4, 65:8, 65:13, 65:19, 65:23, 66:4, 68:18,</p>	<p>70:15, 72:7, 72:21, 73:2, 73:4, 73:12, 74:5, 74:8, 74:18, 74:25, 75:5, 75:9, 75:12, 75:16, 75:22, 76:19, 77:17, 77:22, 78:22, 79:20, 80:2, 80:16, 81:10, 81:20, 82:4, 82:11, 82:16, 83:2, 83:11, 84:11, 85:11, 86:9, 86:13, 87:8, 87:19, 88:8, 88:15, 89:5, 89:20, 90:3, 90:10, 91:6, 91:14, 91:20, 92:5, 92:22, 94:4, 94:9, 95:24, 96:7, 97:11, 97:18, 97:24, 98:7, 98:16, 99:9, 99:22, 100:18, 101:7, 101:16, 101:19, 101:22, 102:2, 102:7, 102:15, 102:23, 103:2, 103:6, 103:13, 103:24, 104:7, 104:15, 104:23, 105:5, 105:12, 105:21, 106:15, 106:20, 107:7, 108:6, 108:13, 108:23, 109:3, 109:10, 109:19, 109:23, 110:3, 110:7, 110:13, 110:17, 110:23, 111:10, 111:24, 113:3, 114:5 must [4] - 5:22, 6:25, 7:3, 64:6</p> <p>N</p> <p>name [13] - 4:13, 41:25, 43:10, 43:11, 43:17, 43:21, 56:2, 56:4, 56:5, 56:6, 95:14, 96:15, 115:15 Nassau [1] - 98:12 nation [1] - 7:19 necessary [1] - 91:10 need [14] - 7:14, 11:3, 13:5, 13:15, 27:4, 27:5, 38:16, 54:19, 75:9, 81:15, 81:17, 85:11, 93:4, 102:16 needed [2] - 39:15, 104:21 needs [2] - 10:8, 113:9</p>
---	---	---	--	--

<p>NELSON [1] - 1:4 never [13] - 32:19, 58:3, 76:15, 78:3, 100:10, 100:15, 101:11, 101:12, 108:18, 108:24, 109:6, 110:5, 110:24 NEW [1] - 1:2 New [9] - 1:16, 1:25, 2:5, 2:10, 4:17, 22:24, 114:17, 116:6 next [5] - 10:19, 10:22, 113:6, 113:11, 113:17 nice [2] - 23:21, 101:2 nine [3] - 33:25, 34:2, 93:14 nobody [1] - 109:9 NOE [1] - 1:6 Notary [3] - 1:24, 114:17, 116:5 note [2] - 10:23, 48:3 noted [1] - 114:11 nothing [7] - 11:23, 37:15, 45:23, 47:7, 60:15, 70:18, 79:18 Notice [1] - 1:21 noticed [1] - 6:9 notified [1] - 12:5 notify [2] - 7:2, 49:3 noting [1] - 23:13 November [8] - 7:23, 82:9, 82:20, 84:9, 85:9, 86:5, 87:20, 96:4 number [5] - 31:15, 31:16, 56:13, 71:20, 71:23 numbered [1] - 84:23 numbers [2] - 31:10, 31:12</p> <p>O</p> <p>oath [3] - 3:16, 21:8, 21:12 object [9] - 12:3, 12:13, 12:14, 18:19, 54:18, 79:7, 103:12, 103:15 objected [2] - 11:13, 103:10 Objection [5] - 14:13, 34:6, 46:23, 94:9, 110:13 objection [124] - 9:12, 12:13, 13:9,</p>	<p>13:23, 14:8, 14:18, 14:23, 15:13, 16:4, 16:14, 17:13, 20:5, 23:11, 23:23, 24:5, 24:16, 24:19, 28:16, 29:15, 31:20, 32:21, 33:14, 35:16, 36:7, 36:12, 36:21, 37:3, 37:19, 38:4, 38:11, 38:24, 39:25, 40:8, 40:18, 42:8, 42:14, 42:19, 43:2, 45:5, 45:12, 45:22, 46:9, 47:9, 49:18, 51:15, 51:20, 54:4, 57:20, 58:6, 58:16, 59:8, 60:3, 61:4, 61:22, 62:12, 63:14, 63:22, 64:11, 64:21, 65:19, 66:10, 70:6, 70:7, 70:11, 70:12, 74:18, 74:25, 76:19, 77:17, 77:22, 79:9, 81:10, 81:20, 82:4, 82:11, 82:16, 83:2, 83:11, 84:11, 87:8, 87:19, 89:5, 89:20, 90:3, 90:10, 92:5, 92:22, 94:4, 95:24, 96:7, 97:11, 97:18, 97:24, 98:7, 98:16, 99:9, 99:22, 100:18, 101:7, 101:16, 101:21, 102:14, 103:24, 104:7, 104:15, 104:23, 105:5, 105:12, 105:21, 106:15, 106:20, 107:7, 108:6, 108:13, 108:23, 109:3, 109:10, 109:19, 109:23, 110:3, 110:7, 110:17, 110:23, 111:10 objections [10] - 3:10, 12:24, 23:13, 65:3, 67:16, 67:22, 71:11, 77:24, 79:5, 79:11 objects [1] - 23:12 obligation [1] - 6:5 obvious [1] - 41:20 obviously [5] - 41:6, 70:22, 70:23, 71:17, 113:14 occasion [1] - 33:16 occur [1] - 32:16 occurred [1] - 44:16 October [3] - 22:13, 83:13, 83:15</p>	<p>OF [2] - 1:2, 2:8 offer [1] - 13:14 offered [3] - 32:14, 38:14, 104:21 office [8] - 15:10, 29:19, 31:22, 43:18, 56:9, 56:10, 56:11, 71:23 officer [1] - 3:15 OFFICES [1] - 2:8 often [2] - 32:2, 97:16 old [5] - 22:11, 22:12, 22:14, 22:16, 22:20 olga [1] - 56:7 Olga [1] - 56:8 once [2] - 21:3, 45:21 one [27] - 1:19, 6:10, 14:20, 25:15, 25:19, 31:11, 31:12, 31:14, 31:15, 31:23, 33:16, 33:17, 37:23, 43:22, 51:10, 51:18, 72:8, 80:16, 90:12, 101:3, 102:5, 106:8, 109:15, 111:4, 112:24, 113:15, 114:6 one-day [1] - 113:15 open [1] - 57:4 operate [1] - 97:3 operator [1] - 96:19 operator's [2] - 97:4, 97:5 opportunity [3] - 15:21, 30:5, 112:15 order [12] - 1:22, 49:23, 53:13, 53:15, 55:3, 55:8, 98:19, 98:20, 100:11, 103:18, 108:9, 112:21 orders [1] - 98:24 organization [1] - 100:14 origin [1] - 7:19 OSMAR [1] - 1:5 otherwise [2] - 39:12, 107:5 outcome [1] - 116:17 outside [2] - 15:10, 78:12 overtime [12] - 86:19, 86:24, 87:11, 101:9, 105:13, 105:16, 105:23, 106:3, 106:23, 107:2, 107:12, 108:14 own [5] - 23:4, 39:3, 39:5, 75:21</p>	<p>owner [1] - 42:22</p> <p>P</p> <p>P.A [1] - 4:2 P.C [1] - 2:4 p.m [3] - 111:23, 114:11 Pacing [1] - 86:22 page [5] - 28:8, 28:11, 84:18, 84:20, 113:17 PAGE [4] - 115:3, 115:8, 115:17, 117:5 PAGOADA [1] - 1:5 paid [40] - 24:3, 24:13, 25:3, 32:2, 32:24, 33:3, 33:18, 34:18, 37:13, 60:17, 63:13, 65:18, 69:25, 74:16, 74:23, 77:5, 81:18, 81:21, 82:5, 87:12, 89:24, 89:25, 90:5, 90:7, 90:20, 91:13, 92:2, 92:12, 92:20, 92:25, 96:3, 96:23, 97:9, 97:14, 97:17, 102:12, 108:5, 108:9, 108:11, 110:5 paper [3] - 24:9, 29:19, 30:8 papers [11] - 40:3, 40:7, 52:2, 58:20, 58:21, 59:12, 59:14, 60:14, 61:6, 64:17, 86:17 paperwork [2] - 62:3, 83:16 paragraph [2] - 84:23, 85:2 paralegal [3] - 12:22, 13:15, 67:20 pardon [1] - 48:11 part [1] - 113:4 partial [1] - 33:19 parties [4] - 3:6, 112:14, 112:17, 116:15 partner [2] - 41:24, 41:25 passport [13] - 9:5, 9:8, 9:11, 9:21, 9:25, 10:6, 10:12, 10:16, 11:5, 11:8, 12:5, 12:6, 115:9 past [5] - 8:7, 22:14, 57:9, 58:10, 109:14 pause [1] - 44:21 Pavement [1] - 43:10</p>	<p>PAVING [1] - 1:11 Paving [27] - 23:8, 30:17, 32:3, 32:20, 34:24, 37:18, 38:12, 38:22, 39:9, 39:21, 41:13, 41:18, 42:21, 43:6, 43:15, 45:2, 66:18, 82:8, 84:9, 85:16, 93:9, 97:9, 97:14, 98:5, 100:9, 100:17, 111:9 paving [1] - 35:15 pay [45] - 15:20, 29:20, 30:22, 31:3, 33:19, 34:20, 37:9, 37:25, 45:18, 59:3, 60:7, 61:15, 63:3, 64:9, 64:17, 64:18, 64:19, 65:17, 69:24, 74:22, 76:3, 76:24, 77:20, 81:15, 81:16, 81:18, 81:23, 90:5, 90:23, 91:5, 92:4, 92:17, 93:2, 93:4, 94:15, 97:2, 97:3, 97:21, 100:13, 101:3, 101:6, 101:9, 110:21 paycheck [7] - 32:5, 32:9, 33:23, 91:5, 94:18, 94:22, 100:14 paychecks [2] - 31:19, 101:4 paying [7] - 32:25, 57:19, 62:20, 62:23, 94:19, 100:2 payment [5] - 27:24, 30:16, 32:20, 33:24, 92:18 payments [7] - 33:5, 33:6, 33:9, 76:18, 77:15, 93:12, 93:16 payroll [1] - 41:8 Payroll [1] - 115:11 pending [1] - 7:3 people [5] - 20:9, 22:2, 42:24, 104:9, 109:8 peppering [1] - 67:15 per [5] - 48:19, 90:13, 90:17, 90:18, 93:15 PEREZ [1] - 1:7 performed [1] - 32:6 perhaps [1] - 72:5 period [2] - 23:25, 112:25 periods [2] - 53:20, 92:2 Perry [4] - 4:16,</p>
--	---	--	---	---

<p>22:23, 23:2, 23:4 person [14] - 14:5, 28:19, 55:21, 55:22, 56:18, 56:19, 56:21, 75:15, 103:21, 103:25, 105:24, 105:25, 109:5, 109:7 personal [1] - 39:10 perusing [1] - 99:18 Perusing [1] - 99:23 phone [10] - 17:16, 38:15, 38:17, 71:3, 85:21, 85:23, 102:12, 105:17, 110:9, 110:11 phonetic [1] - 42:11 pick [3] - 38:15, 99:3, 99:12 picking [1] - 98:21 pickup [14] - 38:2, 38:9, 38:21, 39:3, 39:5, 39:7, 39:9, 40:21, 41:18, 41:22, 77:9, 77:12, 85:20, 85:23 pickups [1] - 39:4 place [3] - 1:23, 48:25, 112:9 placed [1] - 43:9 plaintiff [1] - 47:5 plaintiffs [1] - 73:24 Plaintiffs [3] - 1:8, 1:19, 2:4 pleasure [1] - 73:19 PLLC [1] - 2:8 point [5] - 60:16, 63:12, 68:23, 69:7, 69:8, 70:16 pointing [1] - 14:4 policy [1] - 100:2 poorly [1] - 88:6 portion [1] - 102:19 portions [1] - 69:17 position [5] - 11:21, 72:6, 72:17, 84:8, 108:3 possess [1] - 54:9 possible [2] - 85:15, 104:24 potentially [2] - 47:4, 47:5 PRACELIS [4] - 1:5, 1:18, 4:7, 114:13 Pracelis [1] - 4:14 pracelis [1] - 115:4 practically [1] - 70:18 practice [1] - 110:15 Practice [1] - 1:21 precisely [1] - 6:14 premises [2] - 16:2,</p>	<p>21:2 prepare [10] - 14:11, 14:15, 14:22, 18:17, 19:25, 20:3, 20:13, 55:17, 56:16, 56:21 prepared [3] - 14:19, 14:24, 18:4 preparer's [1] - 115:15 preparing [1] - 19:18 prescribed [1] - 97:20 presence [1] - 78:12 present [3] - 54:9, 59:2, 115:12 PRESENT [1] - 2:20 prevailing [2] - 96:20, 96:23 primary [1] - 68:11 private [3] - 37:2, 37:8, 77:16 privately [2] - 37:6, 37:9 privilege [9] - 9:16, 16:22, 59:9, 60:13, 91:16, 91:21, 102:10, 103:3, 103:14 privileges [1] - 102:3 problem [13] - 26:15, 40:5, 41:23, 44:25, 45:21, 69:12, 70:10, 79:25, 83:24, 83:25, 101:10, 103:19, 111:11 problems [4] - 39:18, 39:23, 41:25, 42:10 procedure [1] - 112:8 proceed [4] - 13:4, 73:15, 73:16, 88:16 process [2] - 84:4, 113:16 produced [1] - 115:11 PRODUCTION [1] - 115:7 Professional [1] - 1:23 promised [1] - 77:25 proof [1] - 25:22 property [1] - 106:14 protect [1] - 100:15 prove [1] - 77:5 provide [15] - 6:20, 9:7, 9:10, 9:25, 10:5, 10:12, 10:15, 12:4, 13:16, 26:2, 31:2, 41:3, 41:9, 54:13, 57:6 provided [3] - 11:5,</p>	<p>30:22, 38:22 providing [2] - 21:22, 54:18 Public [3] - 1:24, 114:17, 116:5 pump [1] - 110:4 purchase [2] - 23:19, 28:2 purchased [1] - 23:7 purchasing [1] - 23:10 purpose [2] - 27:22, 58:5 purposes [1] - 48:21 pursuant [1] - 1:20 pursue [1] - 11:16 pursuit [1] - 72:15 put [5] - 14:25, 59:11, 87:10, 102:11, 107:25</p> <p style="text-align: center;">Q</p> <p>QINTANILLA [1] - 1:5 questioning [3] - 48:17, 85:14, 86:10 questions [19] - 4:4, 5:18, 6:10, 7:3, 7:9, 11:4, 13:25, 14:25, 73:17, 73:22, 75:6, 75:20, 79:13, 79:17, 83:19, 84:5, 93:5, 111:25, 112:4 quicker [2] - 46:18, 84:4 quickly [1] - 10:5 QUINTANILLA [1] - 1:4 Quintanilla [2] - 66:18, 67:13 QUINTEROS [1] - 1:6 quite [2] - 41:24, 53:7</p> <p style="text-align: center;">R</p> <p>Raffe [1] - 42:11 Ranerio [1] - 42:11 rate [3] - 97:2, 97:4, 97:6 rates [1] - 96:24 reach [1] - 71:20 read [5] - 29:14, 69:16, 102:7, 102:18, 102:20 Read [1] - 18:9</p>	<p>ready [2] - 27:2, 88:15 real [1] - 112:18 realize [1] - 102:13 realized [1] - 97:20 really [4] - 45:20, 59:19, 69:11, 71:14 reason [6] - 12:8, 70:17, 101:8, 103:18, 105:16, 105:22 REASON [10] - 117:7, 117:9, 117:11, 117:13, 117:15, 117:17, 117:19, 117:21, 117:23, 117:25 reasons [1] - 117:4 receipt [1] - 77:4 receipts [7] - 40:10, 40:14, 40:15, 40:16, 40:17, 41:2, 115:10 receive [13] - 9:19, 11:2, 28:20, 32:5, 32:8, 33:4, 33:6, 33:9, 37:9, 61:14, 69:23, 92:14, 93:12 received [10] - 32:20, 33:23, 41:17, 43:6, 60:20, 61:7, 61:8, 76:6, 77:15, 84:10 receiving [1] - 31:19 recent [1] - 19:13 recently [1] - 95:22 recess [7] - 26:13, 26:24, 48:14, 74:10, 80:7, 88:11, 111:22 recollection [2] - 86:7, 87:16 recommendation [2] - 43:24, 44:6 record [10] - 4:13, 13:9, 23:14, 66:7, 67:15, 68:13, 77:14, 102:6, 102:20, 116:12 records [2] - 50:9, 107:22 referenced [1] - 15:23 referring [3] - 45:16, 58:24, 59:15 refuse [1] - 47:13 regard [2] - 110:21, 112:3 regarding [4] - 11:10, 48:18, 71:10, 111:25 regardless [1] - 17:5 register [1] - 40:16 reiterated [1] - 24:21 related [1] - 116:13</p>	<p>relay [1] - 57:2 remain [3] - 54:23, 55:12, 103:9 remainder [1] - 112:13 remember [32] - 28:17, 41:23, 42:2, 42:16, 51:16, 54:22, 56:23, 62:5, 62:6, 62:8, 62:17, 62:18, 62:20, 62:22, 62:23, 63:2, 63:9, 75:3, 75:4, 76:3, 77:23, 82:5, 82:6, 83:8, 85:9, 85:10, 85:24, 86:23, 99:24, 106:5, 106:11 remembers [3] - 64:25, 65:24, 68:24 reminding [1] - 75:22 removed [2] - 95:22, 96:6 rent [1] - 39:16 rentals [1] - 40:11 rented [1] - 39:12 repay [1] - 30:17 repeat [7] - 17:24, 17:25, 20:15, 20:22, 60:4, 81:25, 100:19 repeating [1] - 64:3 repetitive [2] - 70:24, 79:12 report [4] - 51:24, 51:25, 77:14, 93:16 reported [1] - 50:19 Reporter [1] - 1:24 reporter [4] - 5:25, 6:15, 69:16, 102:21 represent [5] - 59:4, 59:7, 60:18, 61:16, 61:20 representation [6] - 44:20, 59:25, 60:8, 61:9, 70:3, 73:7 representing [1] - 60:22 request [5] - 11:14, 48:17, 55:4, 60:4, 85:11 requested [4] - 11:8, 11:9, 30:21, 102:19 REQUESTS [1] - 115:7 requests [1] - 55:11 require [2] - 5:2, 66:20 required [1] - 5:17 reserved [1] - 3:11 reserving [1] - 10:24 reside [1] - 22:22</p>
---	--	--	---	---

<p>resolution [1] - 112:19</p> <p>respect [1] - 20:9</p> <p>respective [1] - 3:6</p> <p>respond [2] - 5:18, 55:4</p> <p>response [5] - 6:10, 6:15, 71:12, 81:14, 92:8</p> <p>responsibility [1] - 84:3</p> <p>rest [4] - 23:16, 34:3, 44:23, 104:2</p> <p>restate [1] - 25:6</p> <p>result [8] - 11:4, 61:2, 69:21, 73:23, 74:14, 74:17, 81:8, 81:13</p> <p>resume [1] - 112:20</p> <p>retainer [1] - 59:24</p> <p>retaliatory [1] - 69:22</p> <p>rethink [1] - 72:6</p> <p>return [4] - 8:21, 46:6, 49:7, 50:12</p> <p>returns [16] - 46:4, 46:21, 49:16, 49:17, 49:24, 50:2, 50:4, 50:7, 51:8, 51:18, 54:8, 54:19, 55:18, 77:16, 93:17, 115:12</p> <p>review [3] - 47:11, 48:23, 112:5</p> <p>Rich [1] - 70:25</p> <p>rights [1] - 100:15</p> <p>RIVERA [1] - 1:5</p> <p>Riverhead [1] - 98:11</p> <p>RODRIGUEZ [1] - 1:6</p> <p>role [3] - 54:23, 83:18, 103:9</p> <p>room [4] - 68:3, 68:8, 69:15, 78:10</p> <p>Rules [3] - 1:21, 47:11, 67:19</p> <p>rules [2] - 12:23, 13:17</p> <p>ruling [2] - 66:11, 79:16</p> <p>S</p> <p>Salvador [3] - 7:20, 7:22, 9:3</p> <p>satisfied [2] - 69:3, 70:22</p> <p>Saturday [5] - 25:20, 90:12, 90:25, 93:9, 93:10</p>	<p>Saturdays [9] - 25:2, 25:14, 25:20, 92:11, 92:17, 92:24, 92:25, 93:3, 93:11</p> <p>Saul [4] - 66:16, 67:7, 73:13, 73:20</p> <p>SAUL [1] - 2:6</p> <p>saw [7] - 8:9, 15:10, 15:16, 20:9, 29:19, 30:8, 83:16</p> <p>school [1] - 7:12</p> <p>sealing [1] - 3:6</p> <p>second [1] - 28:11</p> <p>SECRETARY [16] - 66:13, 66:22, 67:4, 67:8, 68:2, 68:5, 68:16, 70:25, 71:14, 71:24, 72:16, 78:15, 78:20, 78:23, 79:24</p> <p>see [13] - 4:22, 7:7, 15:16, 16:9, 32:13, 40:25, 66:24, 71:3, 84:24, 84:25, 85:2, 85:8, 99:20</p> <p>seeking [1] - 9:15</p> <p>seem [1] - 44:14</p> <p>send [1] - 10:14</p> <p>sent [1] - 106:19</p> <p>sentences [1] - 44:8</p> <p>separate [3] - 18:7, 22:6, 69:21</p> <p>September [2] - 83:12, 83:15</p> <p>serious [1] - 47:6</p> <p>served [4] - 85:4, 85:17, 86:15, 86:21</p> <p>service [1] - 55:18</p> <p>services [1] - 55:20</p> <p>set [2] - 116:9, 116:18</p> <p>settlement [1] - 113:12</p> <p>seven [5] - 22:4, 22:15, 74:21, 79:14, 112:25</p> <p>seven-hour [1] - 112:25</p> <p>seventh [1] - 68:20</p> <p>several [1] - 109:8</p> <p>shaking [1] - 7:7</p> <p>shall [2] - 3:11, 100:19</p> <p>Sharp [1] - 2:21</p> <p>SHEET [1] - 117:2</p> <p>shop [1] - 56:8</p> <p>Shore [1] - 56:15</p> <p>short [1] - 112:21</p> <p>shorted [1] - 101:6</p> <p>show [9] - 24:3, 24:13, 27:10, 29:3,</p>	<p>80:12, 95:4, 98:9, 98:14, 99:14</p> <p>shows [1] - 28:14</p> <p>si [4] - 19:22, 19:23</p> <p>sick [2] - 8:12, 73:19</p> <p>side [1] - 76:18</p> <p>sign [1] - 30:5</p> <p>signature [2] - 28:10, 30:2</p> <p>Signed [1] - 114:15</p> <p>signed [5] - 3:15, 3:17, 30:4, 30:12, 73:8</p> <p>silent [3] - 54:24, 55:13, 103:9</p> <p>simply [2] - 19:2, 68:22</p> <p>sister [1] - 26:18</p> <p>sit [2] - 54:23, 72:11</p> <p>site [2] - 98:6, 108:16</p> <p>sitting [1] - 102:15</p> <p>situation [1] - 71:16</p> <p>six [4] - 22:4, 34:2, 64:3, 93:14</p> <p>sixth [1] - 68:20</p> <p>slow [1] - 101:2</p> <p>slowly [1] - 17:25</p> <p>small [1] - 82:23</p> <p>smoked [1] - 8:8</p> <p>solely [1] - 48:21</p> <p>soliciting [6] - 60:12, 91:15, 101:17, 102:9, 102:23, 103:14</p> <p>someone [2] - 51:13, 71:19</p> <p>sometimes [15] - 32:24, 33:3, 33:11, 34:20, 35:11, 35:12, 35:21, 36:16, 83:23, 90:11, 90:12, 98:23, 104:10, 108:2</p> <p>somewhere [1] - 40:22</p> <p>son [4] - 22:13, 43:11, 43:17, 43:22</p> <p>soon [4] - 10:7, 10:18, 72:18, 85:13</p> <p>sorry [5] - 17:23, 22:5, 25:13, 44:17, 77:10</p> <p>sort [1] - 94:6</p> <p>sought [1] - 66:11</p> <p>Spanish [7] - 4:2, 4:4, 4:5, 5:5, 68:12, 107:15</p> <p>speaking [16] - 12:24, 15:12, 20:3, 20:13, 65:2, 67:16, 67:22, 70:6, 70:7, 70:11, 70:12, 71:10,</p>	<p>79:5, 79:10, 89:21, 101:20</p> <p>specifically [1] - 70:2</p> <p>specifics [1] - 89:9</p> <p>spend [2] - 79:13, 113:11</p> <p>spot [1] - 57:4</p> <p>standard [1] - 110:21</p> <p>stands [1] - 13:14</p> <p>star [1] - 72:4</p> <p>stare [1] - 13:11</p> <p>start [6] - 8:24, 34:23, 35:3, 35:8, 36:17, 45:20</p> <p>started [11] - 32:17, 35:2, 35:6, 41:13, 42:6, 43:16, 46:2, 54:7, 56:19, 97:25, 104:17</p> <p>state [2] - 4:12, 66:10</p> <p>State [3] - 1:24, 114:17, 116:6</p> <p>statement [2] - 5:11, 85:6</p> <p>STATES [1] - 1:2</p> <p>States [2] - 7:22, 9:3</p> <p>stating [1] - 66:7</p> <p>stay [1] - 8:18</p> <p>stepped [3] - 68:9, 70:17, 70:24</p> <p>still [6] - 20:16, 73:25, 86:11, 95:21, 98:13, 104:20</p> <p>STIPULATED [3] - 3:4, 3:9, 3:13</p> <p>stipulation [3] - 48:19, 48:24, 49:4</p> <p>Stone [2] - 96:16, 96:18</p> <p>stop [2] - 35:11, 42:12</p> <p>Street [4] - 4:16, 22:23, 23:2, 23:4</p> <p>strict [1] - 18:25</p> <p>stub [1] - 30:22</p> <p>stubs [10] - 24:7, 24:21, 24:25, 25:24, 26:3, 26:9, 31:3, 31:5, 31:10, 31:13</p> <p>stuck [1] - 40:21</p> <p>subject [1] - 11:24</p> <p>subscribed [1] - 114:15</p> <p>sue [2] - 105:2</p> <p>sued [6] - 57:24, 58:12, 58:15, 60:2, 60:9, 60:23</p> <p>SUFFOLK [1] - 1:11</p>	<p>Suffolk [41] - 23:8, 30:17, 32:3, 32:20, 34:24, 37:17, 38:12, 38:22, 39:9, 39:21, 41:13, 41:18, 42:21, 42:22, 43:6, 43:10, 43:15, 43:16, 45:2, 45:4, 66:18, 82:8, 84:9, 85:16, 86:21, 86:22, 93:8, 93:9, 97:8, 97:9, 97:13, 98:4, 98:5, 100:8, 100:9, 100:16, 100:17, 111:8, 111:9</p> <p>SUFFOLK [1] - 1:11</p> <p>suggest [1] - 44:20</p> <p>suing [8] - 42:18, 42:20, 42:25, 61:17, 81:13, 104:4, 104:12, 104:13</p> <p>suit [1] - 58:3</p> <p>Sunrise [2] - 1:16, 2:5</p> <p>supervisor [1] - 111:5</p> <p>support [2] - 57:15, 57:19</p> <p>supposed [1] - 107:17</p> <p>surname [1] - 96:14</p> <p>surprised [1] - 91:17</p> <p>sworn [6] - 3:15, 3:17, 4:3, 4:8, 21:12, 116:9</p> <p>system [2] - 112:2, 112:4</p> <p>T</p> <p>table [1] - 14:5</p> <p>tax [20] - 46:4, 46:6, 46:21, 49:7, 49:15, 49:17, 49:24, 50:2, 50:4, 50:7, 50:12, 51:8, 51:18, 54:8, 54:19, 55:17, 56:24, 77:16, 93:17, 115:12</p> <p>Tax [1] - 115:15</p> <p>taxes [10] - 48:18, 49:9, 49:11, 49:22, 51:11, 51:25, 52:2, 55:25, 56:16, 56:22</p> <p>tear [1] - 108:2</p> <p>telephone [2] - 72:22, 111:14</p> <p>ten [5] - 26:21, 26:22, 107:16, 108:9, 108:19</p> <p>terminated [1] - 85:9</p>
--	--	--	--	---

<p>terms [3] - 25:9, 94:7, 94:11</p> <p>testified [9] - 4:9, 21:21, 34:9, 49:10, 49:14, 76:17, 76:24, 92:13, 108:25</p> <p>testify [2] - 21:17, 92:15</p> <p>testifying [2] - 63:2, 69:23</p> <p>Testimony [1] - 1:21</p> <p>testimony [13] - 14:17, 24:22, 26:16, 36:6, 48:24, 51:19, 51:22, 54:6, 88:6, 89:15, 101:15, 116:8, 116:12</p> <p>TESTIMONY [1] - 115:2</p> <p>thanked [1] - 103:22</p> <p>thanking [1] - 104:4</p> <p>THAT [3] - 116:8, 116:11, 116:16</p> <p>THE [35] - 5:12, 14:4, 25:4, 25:10, 25:16, 41:5, 43:8, 43:12, 46:13, 57:8, 63:5, 66:13, 66:22, 67:4, 67:8, 68:2, 68:5, 68:16, 70:25, 71:7, 71:14, 71:24, 72:16, 77:10, 78:15, 78:20, 78:23, 79:24, 81:25, 90:14, 92:7, 100:19, 100:23, 109:4, 114:10</p> <p>there'll [1] - 23:17</p> <p>Thomlinson [1] - 71:12</p> <p>three [11] - 8:20, 40:22, 45:17, 52:22, 53:24, 57:9, 58:10, 76:22, 80:4, 106:8, 106:10</p> <p>three-minute [1] - 80:4</p> <p>throughout [1] - 100:8</p> <p>time-and-a-half [1] - 97:14</p> <p>timesheet [1] - 107:14</p> <p>TO [1] - 115:2</p> <p>to.. [1] - 102:16</p> <p>today [15] - 4:20, 5:2, 5:15, 7:24, 11:9, 12:7, 13:19, 13:22, 14:7, 14:14, 14:16, 26:16, 64:8, 66:23, 71:2</p> <p>today's [4] - 14:12, 16:19, 17:3, 112:13</p>	<p>Tom [2] - 87:2, 87:17</p> <p>Tommy [8] - 85:20, 86:15, 86:18, 87:4, 98:8, 107:25, 111:12</p> <p>took [7] - 20:16, 30:20, 88:17, 106:16, 108:18, 108:25, 109:5</p> <p>towards [1] - 112:24</p> <p>town [1] - 56:14</p> <p>track [3] - 107:2, 107:11, 107:19</p> <p>transcript [2] - 57:4, 116:11</p> <p>translate [3] - 31:7, 44:21, 44:23</p> <p>translator [1] - 44:10</p> <p>transport [1] - 109:18</p> <p>travel [1] - 100:3</p> <p>trial [1] - 3:12</p> <p>TRIAL [1] - 1:18</p> <p>truck [11] - 38:2, 38:9, 38:22, 39:6, 39:13, 39:16, 40:11, 41:18, 105:9, 105:19, 105:20</p> <p>trucks [2] - 39:21, 105:10</p> <p>true [6] - 36:10, 74:7, 81:7, 81:23, 85:7, 116:11</p> <p>truth [5] - 21:12, 64:6, 72:15, 85:8, 89:21</p> <p>truthful [1] - 81:5</p> <p>try [3] - 71:4, 71:18, 75:19</p> <p>trying [2] - 70:4, 113:12</p> <p>Tuesday [2] - 114:6, 114:8</p> <p>TULIO [1] - 1:6</p> <p>turn [2] - 28:7, 84:17</p> <p>twisted [1] - 73:19</p> <p>two [22] - 8:11, 8:14, 22:16, 25:18, 31:11, 31:13, 31:16, 31:23, 35:12, 36:15, 39:4, 45:17, 52:22, 53:24, 76:22, 80:4, 87:15, 90:12, 91:2, 91:4, 106:8</p> <p>two-years-old [1] - 22:16</p> <p>type [3] - 6:14, 39:23, 96:17</p> <p>typical [1] - 71:11</p> <p>typically [1] - 71:8</p>	<p>U</p> <p>um-hum [1] - 6:10</p> <p>unable [1] - 112:20</p> <p>unacceptable [1] - 12:17</p> <p>under [2] - 21:8, 21:11</p> <p>understood [2] - 6:21, 30:12</p> <p>unemployment [8] - 52:17, 52:20, 52:24, 53:2, 53:6, 53:10, 53:20, 53:23</p> <p>unfortunately [1] - 44:24</p> <p>Union [2] - 56:12, 56:14</p> <p>union [22] - 34:21, 43:5, 43:7, 43:9, 45:21, 45:23, 77:24, 78:4, 93:21, 93:23, 94:15, 94:22, 94:23, 95:9, 95:23, 96:6, 100:2, 100:4, 100:7, 101:4, 101:5, 101:13</p> <p>unit [1] - 106:19</p> <p>United [2] - 7:21, 9:2</p> <p>UNITED [1] - 1:2</p> <p>unlawful [1] - 73:24</p> <p>unless [1] - 83:20</p> <p>untruth [1] - 21:16</p> <p>up [17] - 11:3, 38:15, 60:16, 61:25, 68:13, 69:9, 70:4, 96:3, 98:9, 98:14, 98:21, 99:3, 99:13, 105:14, 105:17, 108:2, 109:25</p> <p>upfront [1] - 66:23</p> <p>utilized [1] - 55:23</p>	<p>105:2, 105:3, 105:8, 111:8</p> <p>Vecchia's [3] - 74:14, 76:25, 81:8</p> <p>VECCHIO [1] - 1:12</p> <p>VEGA [1] - 1:6</p> <p>vehicle [15] - 41:18, 42:3, 77:13, 97:23, 109:17, 109:22, 109:25, 110:6, 110:9, 110:12, 110:16, 110:22, 111:3, 111:5, 111:6</p> <p>vehicles [1] - 105:15</p> <p>verbal [1] - 5:22</p> <p>video [2] - 15:9, 15:23</p> <p>vs [1] - 66:18</p>	<p>withdrawn [1] - 18:14</p> <p>withhold [1] - 92:25</p> <p>WITNESS [6] - 41:5, 46:13, 57:8, 114:10, 115:3, 116:18</p> <p>Witness [1] - 4:7</p> <p>witness [19] - 19:12, 27:14, 28:9, 29:7, 68:2, 68:6, 68:7, 68:24, 69:5, 70:14, 72:12, 78:9, 78:13, 78:18, 80:19, 84:19, 92:8, 116:8, 116:12</p> <p>witness's [1] - 68:11</p> <p>word [7] - 7:13, 24:8, 77:7, 79:9, 102:5</p> <p>words [1] - 111:19</p> <p>worker [1] - 15:3</p> <p>workers [3] - 99:3, 99:7, 99:12</p> <p>works [1] - 56:9</p> <p>worry [2] - 30:11, 43:20</p> <p>write [7] - 31:12, 31:15, 31:16, 31:18, 76:9, 76:12, 95:17</p> <p>written [3] - 25:22, 29:10, 76:15</p>
		<p>V</p> <p>vacant [1] - 13:11</p> <p>Van [1] - 2:20</p> <p>VAN [1] - 4:2</p> <p>VECCHIA [2] - 1:11</p> <p>Vecchia [35] - 2:20, 16:2, 16:9, 16:11, 21:2, 21:22, 23:9, 24:3, 24:14, 28:6, 28:21, 33:7, 33:10, 34:11, 42:13, 42:23, 45:8, 45:11, 51:14, 58:13, 60:23, 61:17, 77:5, 77:19, 81:13, 86:22, 89:24, 90:20, 91:4, 92:3, 104:20,</p>	<p>W</p> <p>wage [2] - 96:21, 96:24</p> <p>wages [1] - 25:15</p> <p>wait [1] - 46:20</p> <p>waiting [2] - 14:14, 14:16</p> <p>waived [1] - 3:8</p> <p>Wallace [3] - 60:21, 62:2, 64:9</p> <p>WALTER [1] - 1:4</p> <p>wants [2] - 69:4, 72:13</p> <p>warned [1] - 103:11</p> <p>warning [4] - 12:12, 12:19, 65:12, 103:8</p> <p>wears [1] - 72:6</p> <p>weather [3] - 35:10, 35:22, 36:19</p> <p>Wednesdays [1] - 107:24</p> <p>week [11] - 25:14, 25:21, 29:21, 33:18, 33:23, 90:12, 90:13, 92:14, 92:20, 113:6, 113:12</p> <p>weekends [1] - 93:13</p> <p>weeks [2] - 8:20, 33:19</p> <p>WHEREOF [1] - 116:18</p> <p>whole [1] - 48:17</p> <p>wife [10] - 22:10, 40:3, 57:15, 57:18, 57:25, 58:2, 58:3, 77:24, 106:24, 107:4</p> <p>willing [2] - 67:18, 67:24</p> <p>wish [1] - 117:3</p>	<p>Y</p> <p>yard [12] - 77:12, 98:9, 98:14, 98:20, 98:22, 99:4, 99:11, 99:13, 100:6, 107:16, 107:18, 110:4</p> <p>year [25] - 8:16, 33:25, 34:2, 42:10, 46:22, 50:7, 51:3, 51:4, 51:10, 51:12, 51:14, 51:18, 52:16, 52:19, 52:23, 53:25, 54:3, 54:9, 76:22, 82:7, 93:15, 104:17, 104:18, 104:19</p> <p>year-and-a-half [3] - 42:10, 51:4, 104:19</p> <p>years [24] - 8:7, 8:11, 8:14, 22:12, 22:14, 22:16, 22:20, 40:22, 45:13, 45:15, 45:17, 50:10, 50:16, 50:18, 52:10, 52:25, 53:16, 53:17, 56:17, 57:10, 58:10, 76:21, 82:21, 109:14</p> <p>yes/no [2] - 19:6, 19:8</p>

York [9] - 1:16, 1:25,
2:5, 2:10, 4:17, 22:24,
114:17, 116:6
YORK [1] - 1:2
yourself [7] - 12:23,
37:2, 37:12, 37:13,
55:18, 103:23, 109:18

Z

zabell [1] - 68:18
Zabell [8] - 13:3,
66:16, 67:7, 69:2,
75:25, 79:12, 88:10,
115:4
ZABELL [110] - 2:4,
2:6, 4:11, 5:10, 9:24,
10:9, 10:17, 10:19,
10:23, 11:12, 11:15,
11:18, 11:23, 12:11,
13:7, 13:10, 16:25,
17:8, 17:20, 17:23,
18:11, 18:21, 19:11,
20:6, 24:18, 24:23,
25:7, 26:12, 26:22,
40:24, 41:6, 43:25,
44:3, 44:5, 44:12,
44:17, 46:12, 46:16,
47:2, 47:8, 47:19,
48:3, 48:8, 48:11,
48:23, 54:12, 54:22,
55:6, 55:9, 55:12,
56:25, 59:11, 59:16,
63:8, 65:2, 65:6,
65:11, 65:25, 66:15,
67:2, 67:6, 67:10,
68:4, 68:9, 69:11,
71:5, 71:8, 71:22,
72:2, 72:14, 72:19,
72:24, 73:3, 73:6,
73:23, 74:7, 74:9,
75:7, 75:10, 75:14,
75:18, 78:7, 78:14,
78:17, 79:18, 79:22,
80:3, 80:18, 82:3,
85:13, 86:11, 88:4,
88:13, 89:8, 91:8,
91:17, 92:9, 100:21,
101:20, 101:24,
102:4, 102:11,
102:17, 102:25,
103:4, 103:8, 111:20,
112:3, 114:2, 114:7

ORIGINAL

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

X

4 NELSON QUINTANILLA, ALEJANDRO AMAYA, ALEX AMIR
5 AREVALO, MAYNOR FAJARDO, WALTER GARCIA, JOSE L.
6 MARTINEZ, PRACELIS MENDEZ, OSMAR W. PAGOADA,
7 JAVIER QUINTANILLA, EDWIN RIVERA, CARLOS
8 ESCALANTE, KEVIN GALEANO, LERLY NOE RODRIGUEZ,
9 JOSE VEGA CASTILLO, JUAN QUINTEROS, and MARCUS
10 TULIO PEREZ,

11 Plaintiffs,

12 -against-

13 SUFFOLK PAVING CORP., SUFFOLK ASPHALT CORP.,
14 LOUIS VECCHIA, CHRISTOPHER VECCHIA, HELENE
15 VECCHIA, and JOHN DOES 1-5,

16 Defendants.

X

17 September 13, 2011
18 10:55 a.m.

19 4875 Sunrise Highway
20 Bohemia, New York

21 CONTINUED EXAMINATION BEFORE TRIAL of
22 PRACELIS MENDEZ, one of the Plaintiffs herein,
23 taken by the Defendants, pursuant to Order, held
24 at the above-mentioned time and place, before
25 MICHELLE ADAMO, a Notary Public of the State of
New York.

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A P P E A R A N C E S :

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ALSO PRESENT:

Margarita Arias - Spanish interpreter

Louis Vecchia

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the same
are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be
signed and sworn to before any officer
authorized to administer an oath, with the
same force and effect as if signed and
sworn to before the Court.

1 P. Mendez

2 M A R G A R I T A A R I A S, having been first
3 duly sworn by a Notary Public within and
4 for the State of New York, translated the
5 questions from English into Spanish and the
6 answers from Spanish into English under
7 oath as follows:

8 P R A C E L I S M E N D E Z, the witness
9 herein, having been first duly sworn by a
10 Notary Public in and of the State of New
11 York, was examined and testified as
12 follows:

13 CONTINUED EXAMINATION BY

14 MR. ZABELL:

15 Q State your name for the record,
16 please.

17 A Pracelis Mendez.

18 Q State your address for the record,
19 please.

20 A [REDACTED] New
21 York [REDACTED].

22 Q How are you today, Mr. Mendez?

23 A Very good, very good.

24 Q Can you think of any reason why
25 your ability to testify truthfully today would

1 P. Mendez

2 be impaired?

3 A Yes, if you -- because listening
4 to two things is a little confusing.

5 Q Can you think of any reason why
6 your ability to testify truthfully today would
7 be impaired?

8 A No, I'm only going to answer
9 correctly.

10 Q Do you know why you're suing the
11 defendants?

12 A For the same thing, for the
13 overtime.

14 Q Are you finished?

15 A That is the reason, the overtime,
16 because they never paid us the majority of the
17 overtime.

18 Q How much overtime do you believe
19 you're entitled to?

20 A How long we're talking about -- or
21 for each day?

22 Q Total.

23 A It's difficult to say, but what I
24 know is that we had to work a minimum of ten
25 hours for him to pay eight. And after ten hours

1 P. Mendez

2 was when we could ask for one or two or
3 three hours, it depended.

4 Q You would get paid one or two or
5 three hours overtime, correct?

6 MR. WALLACE: Objection.

7 A Like I said, it's supposed to be
8 after eight, and then the overtime. Then, we're
9 asking for at least three or four hours a day.

10 Q Do you understand that overtime is
11 supposed to be paid after forty hours worked a
12 week?

13 A Some companies -- and sometimes --
14 I'm not sure, but some companies -- it doesn't
15 matter about the forty hours. It depends on the
16 day; sometimes you pay overtime after a day and
17 it doesn't matter if you worked overtime or not.

18 Q You believe you worked overtime on
19 a daily basis, not a weekly basis?

20 A Yes, each day.

21 Q How much do you believe you're
22 entitled to receive from the defendants?

23 MR. WALLACE: Objection, asked and
24 answered.

25 Q You may answer.

1 P. Mendez

2 A I don't know. I have no idea what
3 I'm asking for, my overtime.

4 Q How much money in overtime are you
5 asking for?

6 A What he supposed to pay me each
7 year. And I'm not asking for more and I'm not
8 asking for less. I'm asking for what it's
9 supposed to be.

10 Q What's it supposed to be, sir?

11 A How much did he pay me? Because
12 when I had the union, every year it would go up
13 about one dollar or two dollars.

14 So I started -- if I am not
15 mistaken, 44, or something like that. And then
16 after that, it's time-and-a-half, depending on
17 what they paid me. And Saturdays was double
18 time, or if we worked at night, it was double
19 time and he didn't pay doable time either.
20 That's it.

21 Q How much do you believe you're
22 entitled to?

23 MR. WALLACE: Objection, asked and
24 answered.

25 Q You may answer.

1 P. Mendez

2 A Just that I can't say, that is my
3 response.

4 Q Can you try to figure it out?

5 A I can't tell you.

6 Q Why can't you tell me?

7 A I don't know, I don't know, I
8 don't know, I don't know.

9 Q Did you ever go directly in the
10 morning to a worksite?

11 MR. WALLACE: Objection. You can
12 answer.

13 A Most of the time, like I told you
14 last time, I went to the office because most of
15 the time, every day, we had to go to the yard.

16 Q The question that I asked you was:
17 Did you ever go directly to a worksite?

18 A Yes. He would send me to a job
19 and if I didn't finish it, yes, of course, then
20 I would go straight to the job site. I had to
21 be at work at 7:00.

22 Q Did you ever keep track of what
23 job sites you went directly to?

24 A It's difficult to remember the
25 exact day and date.

1 P. Mendez

2 Q Do you remember any of the general
3 days or dates?

4 A No.

5 Q Did you ever keep track of the
6 overtime hours that you believe you're entitled
7 to?

8 A What I know is that when he would
9 tell me to be at work at 7:00, I would be there
10 at 7:00. When I finished the job -- not when I
11 got to the job -- to the yard, I would write
12 down the time.

13 Q Are you aware that the GPS in your
14 vehicle tracked what time you got to the job and
15 what time you left the job?

16 MR. WALLACE: Objection.

17 Q You may answer.

18 A The GPS didn't -- I didn't have
19 the GPS for a long time and after -- if the GPS
20 worked, it worked from when I turned the pick-up
21 on and I turned on the pick-up. If he told me
22 to get to the yard at 5:00, I turned the pick-up
23 on at 4:30.

24 If I had to be there at 5:00 -- if
25 you look at that record, you will see, as I told

1 P. Mendez

2 you last time, when we worked locally, 6:30,
3 when we worked in Riverhead or Hempstead, it
4 would be 6:00.

5 When we went to the City
6 sometimes, we would go at 5:00. They wanted us
7 to leave at that time from the yard.

8 Q Did you ever see any of the GPS
9 reports?

10 A No.

11 Q Do you know if those GPS reports
12 indicate whether or not you were at job sites
13 when you say you were there?

14 MR. WALLACE: Objection.

15 Q You may answer.

16 A Where he would send me, that's
17 where the pick-up was. I would turn it off when
18 I got to work. I don't know if it still worked
19 while it was turned off or not.

20 Q I'm letting you know, the GPS does
21 work when you turn it off.

22 A Okay, so then you have to know
23 where it was.

24 Q There came a time when you did not
25 want the defendants to know where you were and

1 P. Mendez

2 you disabled the GPS, correct?

3 MR. WALLACE: Objection.

4 Q You may answer.

5 A That question -- you asked me the
6 same one last time, and I said, you know how I
7 am and what kind of worker I am, I don't fool
8 around.

9 And he knows the reason why I
10 disconnected it -- sometimes it was because it
11 was already -- as I told you last time, I was up
12 to here (indicating), I was tired of not being
13 paid overtime, and I did it so when they would
14 come -- when I told him and Helene to check my
15 overtime and not to check the GPS because they
16 were more worried about where the people were
17 than the overtime that we had worked with.

18 Q So you did not want the defendants
19 to look at your GPS records, correct?

20 MR. WALLACE: Objection.

21 A Doesn't bother me at all that the
22 bosses had GPS, because many times I would ask
23 him for more workers. So then, many times he
24 knows that I would stop the machine. I would
25 have to do the work.

1 P. Mendez

2 Q Did that anger you, that you had
3 to do work?

4 MR. WALLACE: Objection.

5 A No, and he knows that it's not
6 true.

7 Q It angered you that they knew
8 where you were with the GPS units?

9 MR. WALLACE: Objection.

10 A No.

11 Q Why did you tamper with the GPS?

12 MR. WALLACE: Objection.

13 A Because he didn't pay overtime.

14 Q You understand that those GPS
15 records indicated that you were not at worksites
16 when you said you were?

17 MR. WALLACE: Objection.

18 Q You understand that?

19 A Can you repeat the question?

20 Q You understand that those GPS
21 records indicated that you were not at worksites
22 when you said you were?

23 MR. WALLACE: Renewed objection.

24 Q You may answer.

25 A Can you repeat the same

1 P. Mendez

2 question -- no, I'm saying the same thing that I
3 said before.

4 Each job that he sent me to -- and
5 if I had to use the pick-up for his job, the
6 pick-up had to be wherever he sent me.

7 Q Mr. Mendez, you understand that
8 you're at a deposition, do you not?

9 A Yes.

10 Q You understand that you are just
11 to provide answers to the questions that I asked
12 you.

13 Do you understand that?

14 A You're asking me almost the same
15 question every time.

16 Q Do you understand that I am not
17 interested in your excuses or your explanations?
18 That's your attorney's responsibility.

19 MR. WALLACE: Objection.

20 Q I want you to just answer the
21 questions that I ask you.

22 Do you understand that?

23 A I understand. There are questions
24 in which you're trying to involve me, and I have
25 to explain what's happening, because in one

1 P. Mendez

2 question, if I say yes, I have to explain what's
3 happening.

4 Q You do not have to explain, that
5 is the responsibility of your attorney to ask
6 you.

7 You need to just answer my
8 questions and if you do not answer my questions,
9 you're going to be here for a very long time.

10 Do you understand that?

11 A Yes. What I am going to do
12 then -- each question that he's going to tell me
13 not to answer, I am not going to answer.

14 Q Your attorney is not permitted to
15 tell you not to answer questions here today.

16 Do you understand that?

17 A Yes.

18 Q Do you understand that the GPS
19 reports indicate that you were not at certain
20 job sites at the hours that you claim to have
21 been?

22 MR. WALLACE: Objection.

23 Q You may answer now.

24 A I didn't understand that question.

25 Q The GPS reports indicated that you

1 P. Mendez

2 were lying about the time that you were on the
3 job.

4 MR. WALLACE: Objection.

5 Q Do you understand that; yes or no?

6 A I understand, but I -- papers that
7 we gave them each day, we have to work ten or
8 eleven hours for us to be paid eight. That's
9 what we're asking for.

10 Q Do understand that the GPS reports
11 indicate that you were trying to steal from the
12 company?

13 MR. WALLACE: Objection.

14 Q You may answer.

15 A That you're saying -- but since
16 last time, I said if I needed something -- I had
17 to take sand to a yard, two or three jobs that I
18 did, I told him one time there was a dump truck.
19 I told him that I was going to use it and I gave
20 him \$200 in cash.

21 I never stole money from him, I
22 never stole money from him.

23 Q When you say you were on a job
24 site during periods of time where you were not
25 on a job site, you are stealing from the

1 P. Mendez

2 company.

3 MR. WALLACE: Objection.

4 Q Do you understand that?

5 A No.

6 Q Do you understand what it means to
7 steal time; yes or no?

8 A About robbing time, I don't think
9 I robbed time, because when he sends me to a job
10 and I would finish, that was up to where I
11 reported to him. After I finished my work --
12 it's like now, if I finish now, here, and I go
13 home to work at home, I don't think that's
14 robbing him or any other person, because I
15 already finished with what the agreement that I
16 had with each person.

17 Q Did you start your time on each
18 job when you left your house in the morning?

19 A No. I had to get to the yard. I
20 would get there fifteen minutes before, that was
21 when I would write it down. If he said 6:30, I
22 would put 6:30.

23 Q How long did you stay in the yard
24 each morning?

25 A Five, ten minutes. Only to get

1 P. Mendez

2 the paper, the list indicated where I had to go.

3 Q Do you know why your attorney
4 Mr. Wallace thought that you were in the yard
5 for up to two hours every day?

6 MR. WALLACE: Objection.

7 Q You may answer.

8 A I don't know anything about that.

9 Q If Mr. Wallace claimed that you
10 were in the shop for two hours every day, he
11 would be lying, correct?

12 MR. WALLACE: Objection.

13 A There was a confusion here. The
14 two hours that may be -- he could say -- it's
15 just that we had to work a minimum of ten hours
16 for him to pay us eight. That is the minimum
17 that we had to work, ten hours.

18 After ten hours, he would pay
19 eight, not only me, everyone; his law was
20 working ten hours and to pay eight.

21 Q Was that ever written down
22 anywhere?

23 A His law, he said that it was his
24 company, and we had to do what he said.

25 Q You're going to be here for a very

1 P. Mendez

2 long time if you do not answer the questions
3 that I ask you.

4 Do you understand that?

5 A I am answering what you're asking
6 me.

7 Q Did you ever see that policy of
8 working ten hours and getting paid eight written
9 down anywhere? Did you ever see with your ojas?

10 A But they're his laws, in his
11 company, he did whatever he wanted. When I
12 would say something to him, what he would say
13 is, welcome to America.

14 Q When did he say that?

15 A (Response in English.) About
16 three times. I said I pay too many taxes,
17 what's the overtime, he told me about three or
18 four times.

19 Q Mr. Mendez, remember you are to
20 testify in Spanish. This way we can make sure
21 there is no mistake in your understanding of the
22 questions that I ask of you and the answers you
23 provide to us.

24 Are we clear on that?

25 A Yes, yes. Do you want me to

1 P. Mendez

2 repeat the question, what you said?

3 Q No, I am pretty comfortable with
4 my question.

5 A Okay, that's fine.

6 Q Were you ever paid overtime?

7 A Yes, sometimes, yes.

8 Q Do you know how much overtime you
9 were paid during the years that you were at the
10 defendants?

11 A I can't really tell you, because
12 they would check us -- sometimes he would pay
13 everything and sometimes not.

14 Q When did he pay everything?

15 A I can't say the day, but the
16 inspectors that come to the job, you have to
17 give your Social Security, you have to give a
18 name, so he had to pay everything.

19 Q Did he pay everything?

20 MR. WALLACE: Objection.

21 A Sometimes, not always. Ends up
22 like now, people say now he is not paying the
23 Americans the overtime, only the Hispanics.
24 Some friends of mine asked the other people, and
25 he is not paying them regularly, but now he is

1 P. Mendez

2 paying the defendants correctly.

3 Q Who are these friends of yours
4 that are speaking to you?

5 A They're there.

6 Q I want their names.

7 A Okay, I just have one question.

8 Q You are not entitled to ask a
9 question, you are obligated to provide answers.

10 A Nelson Quintanilla.

11 Q Who else?

12 A Only him.

13 Q He is the only person that you
14 spoke to?

15 MR. WALLACE: Objection. When?

16 Q You may answer.

17 Is Nelson Quintanilla the only
18 person that you spoke to?

19 MR. WALLACE: Objection.

20 A When he was working there, because
21 he no longer works there.

22 Q When was the last time you spoke
23 to him?

24 A Sometimes -- it's been quite a few
25 days, but he is my friend. I want to greet him

1 P. Mendez

2 or say hello to him. That is separate.

3 Q What is separate?

4 A You understand if they call me, I
5 have to answer, and if I need something, a
6 favor, I have to call them and nothing else.

7 Q Your brother works for the
8 defendants, doesn't he?

9 A Yes, I explained that to you last
10 time.

11 Q Do you speak to your brother about
12 how he gets paid from the defendants?

13 A Me -- with my brother -- like I
14 told my boss, sometimes I was talking with him,
15 sometimes he needs something from my brother,
16 and my brother doesn't answer me for a few
17 weeks. And I don't have any communication with
18 him as a brother.

19 Q Why? Does he not like you?

20 A No, he's quiet and he knows -- he
21 doesn't like to speak much. It's like the
22 problems that I had with my sister, he doesn't
23 speak -- he doesn't speak -- and speak about
24 that, it hurts me here (indicating). And last
25 time I felt bad about that, when I talk about my

1 P. Mendez

2 sister, I wanted to explode, but I'm fine.

3 Q Do you want to take a minute?

4 A No, let's continue.

5 Q Did your sister work for any of
6 the defendants?

7 A My brother.

8 Q Your sister?

9 A No. My sister lived in El
10 Salvador.

11 Q Your brother currently works for
12 the defendants?

13 A I think he started last year, yes.

14 Q Do you know what the name of his
15 employer is?

16 A Nelson Marketing -- the employer
17 is the boss, isn't it?

18 Q What the name of the company that
19 your brother works for?

20 A I think it's Suffolk Asphalt
21 Corporation.

22 Q What was the name of the
23 corporation that you worked for the defendants?

24 A First, before the union, Suffolk
25 Paving; then, after the union, Suffolk Asphalt

1 P. Mendez

2 Corp.

3 Q From what period of time to what
4 period of time did you work for Suffolk Paving?

5 A It's been a long time ago, so I
6 can't tell you the exact day. But I was
7 checking there now on the paper. I think it's
8 from 1998 to 2001, around there, I'm not very
9 sure.

10 Q From 1998 to 2001, you worked for
11 what corporation?

12 A I'm not -- for Suffolk Paving, I
13 think. I worked from 1998 to 2001 and from 2001
14 to 2009, I think, I'm not -- I forgot.

15 Q So you don't know the name of the
16 corporation that you worked for from 2001 to
17 2009?

18 A I worked for Raffi before him, I
19 think.

20 Q Did you ever work for any entity,
21 other than Suffolk Paving or Suffolk Asphalt,
22 from 1998 to 2009?

23 A No. I only know that when I
24 worked with him, it was only with him, because I
25 only worked for three companies. When he

1 P. Mendez

2 started the company a year after I started
3 working for him, I explained last time that when
4 he had problems with Raffi Lunary, was his name,
5 they used to work together, a partner of his
6 when they had problems.

7 I left, I only worked one year for
8 a company that still gives him work I think.
9 It's Grand -- what is the name of it? I only
10 worked there one year.

11 Then, I went back with Raffi, I
12 went back to him. There was only three
13 companies in the past.

14 Q What were the names of those
15 companies?

16 A Raffi Lunary, I think I worked
17 with him one year. I don't know how to
18 pronounce it.

19 Q When you worked for the
20 defendants, you only worked for Suffolk Paving
21 and Suffolk Asphalt Corp; is that correct?

22 A That's correct. The only thing is
23 that sometimes one day, sometimes they sent me
24 to do a job once for one of those things that
25 they call golf.

1 P. Mendez

2 But that was a long time ago, so
3 then I received a check from there, and I
4 received another one from him, then I had two
5 checks and I was still working for him. And I
6 didn't fill out any application, they just gave
7 me that.

8 But it seems that they were giving
9 me one price, and he was giving me another one.

10 Q What was the name of the company
11 that was giving you the check?

12 A I don't remember.

13 Q Do you remember when that
14 occurred, what year?

15 A It was a long time ago, it was a
16 golf that they made in Deer Park.

17 Q Was that before 2003?

18 A I can't really say.

19 Q Do you know what the union policy
20 is on travel time?

21 A The union, the law of the union is
22 that you have to be at the job at the hour that
23 they say. And then, whenever -- the time that
24 you finish the job, that's the day.

25 Q According to the union contract,

1 P. Mendez

2 you're not to be paid for travel time; is that
3 correct?

4 MR. WALLACE: Objection.

5 Q You may answer.

6 A That is why I'm saying the union
7 has its own laws and he has his.

8 Q Do you understand the union
9 contract governs the terms and conditions of
10 your employment?

11 MR. WALLACE: Objection.

12 Q Do you understand that?

13 A Yes, I think so.

14 Q So you understand that there is no
15 difference between the union rules and the
16 defendants' rules?

17 MR. WALLACE: Objection.

18 A I think -- I can't say yes,
19 because your mother, you have a son and you tell
20 him go to school at seven, your son goes to
21 school at seven. He's the boss, he would tell
22 me come at 6:00 and I was there at 6:00.

23 One time, my brother -- I can't
24 remember the year that my brother worked for
25 him, but he worked for him -- if I am correct,

1 P. Mendez

2 it was 2003 or 2004, but I'm not sure. I don't
3 want to give you an exact date. He told us to
4 be here in the yard at 6:00 a.m. I remember
5 that the LIE, they were working on it at night,
6 and they would open it after 6:00.

7 So I got there because I was in a
8 different car. I got there at the hour that I
9 was supposed to arrive. My brother got there
10 fifteen minutes late and that time he finished
11 my brother because he got there fifteen minutes
12 late.

13 So we had to be there fifteen or
14 ten minutes before the hour that we were
15 supposed to be there. Maybe he doesn't remember
16 that he fired my brother, and I even had an
17 argument with him because of that.

18 But what he said was, both of you
19 go to hell.

20 THE WITNESS: You don't remember
21 that? Do you remember, boss?

22 Q Now listen. Apologize.

23 A I'm sorry.

24 Q I'm going to be respectful here
25 today. Do you understand? We will respect you,

1 P. Mendez

2 but we demand the same.

3 A I am not disrespecting him.

4 Q We will respect you, but we demand
5 the same. Are we clear on that?

6 A Yes, yes. That's what he asks. I
7 respect everyone. I am not the only person, and
8 he knows it.

9 When you're at work -- just
10 because I was in charge, I defended my people,
11 the Hispanics. I am not a person that yells. I
12 am not a person that loses control, only when
13 it's something big.

14 Q Did you respect the GPS equipment?

15 A No. For the same reason that he
16 didn't respect our time.

17 Q The brother that you said that was
18 fired is still working for the defendants; is
19 that correct?

20 A Yes.

21 Q He is not suing the defendants; is
22 that correct?

23 A No. Because he didn't work the
24 necessary time and he started last year.

25 Q When you went to job sites, did

1 P. Mendez

2 you have passengers in your truck?

3 A What do you mean "job sites"?

4 Q Your job assignments.

5 A My boss?

6 Q You.

7 A His jobs, or my jobs, side jobs?

8 Q What side jobs are you referring
9 to?

10 A You're saying side jobs.

11 Q How many side jobs did you do with
12 defendants' equipment?

13 A Like I said last time, about three
14 or four, but he knew it.

15 Q Por semana?

16 A No, a year.

17 Q Only three or four a year?

18 A Yes, I am no longer doing it. I
19 am spending time with my children.

20 Q When you worked for the
21 defendants, you had a company vehicle, did you
22 not?

23 A When I returned for the second
24 time, because he offered me a vehicle and a
25 telephone. I didn't ask for it.

1 P. Mendez

2 Q When you would go to work, you
3 would pick up employees to drive with you, did
4 you not?

5 A Yes.

6 Q Yes or no?

7 A He would always give me a worker
8 or two. The ones that I would take with me
9 would get to my house, would leave their car at
10 the house and they would go with me, if I had to
11 pick up another worker at the yard when he gave
12 me one more or when they said that they were
13 going to give me another one.

14 Q Did you ever pick up anybody at
15 their home to bring them to work?

16 A I don't think so, because most of
17 them have cars, and they would all leave
18 their -- up to three cars at home, but sometimes
19 they would go, yes, just that way.

20 Q What kind of tools would you leave
21 in the truck?

22 A I would only take the equipment
23 that I had. I was very careful with my tools.
24 I don't want anybody to touch them. The back of
25 the truck was not very big. Then after, there

1 P. Mendez

2 was an area for the tools, the small tools, just
3 whatever could fit in the back. After that
4 space was a wheelbarrow, a plate tamper, then
5 three shovels that I alms had, two rakes, picks,
6 we call them picks, that's it, some five or nine
7 cones, the pick-up was full with that stuff.

8 Q Those things always stayed in the
9 truck?

10 A Yes, they were always there.

11 Q Today you had a conversation with
12 Mr. Vecchia, did you not?

13 A Yes.

14 Q You explained to Mr. Vecchia that
15 there are some plaintiffs that don't deserve any
16 money; is that correct?

17 MR. WALLACE: Objection.

18 A He said he wants to offer
19 \$100,000. He said, you know, that some of the
20 plaintiffs are not going to have anything. I
21 said, maybe, but I don't know. That's what I
22 told him. After he called me here asking if I
23 would accept \$5,000, and that the money that I
24 owed him, he would forget about that.

25 But I told him down there that I

1 P. Mendez

2 had already paid him, I wasn't going to say
3 this, but because he said it, he said he
4 accepted that I would pay him. He said, I don't
5 think that's everything. That was the
6 conversation that we had.

7 Q What do you mean, you don't think
8 that's everything?

9 A No, because I told him and I put
10 my hand here (indicating) like I am telling you,
11 if you realize when I speak about my sister, God
12 is first for me, my children and my mother are
13 second, and I told him I know in my heart that I
14 paid you, so that's what worries me more.

15 I told him, you remember that
16 coming in every Wednesday and he would say, take
17 Saturday or take two days sometimes, but most of
18 the time only Saturday. And he said yes, I know
19 but I don't think you paid everything. That's
20 what he told me.

21 Like I said, for me, my family is
22 first -- first is God, that's what I told him.
23 Put your hand on your heart and tell me that I
24 haven't paid you. And when my sister comes
25 up -- it's recent, but let's continue. It

1 P. Mendez

2 hurts.

3 MR. WALLACE: Let's take a break.

4 (Whereupon, a short recess was
5 taken from 11:40 a.m. to 11:47 a.m.)

6 Q Mr. Mendez, you said how the
7 people get paid now is correct.

8 Do you remember that?

9 A The rent -- what are you saying?

10 Q How the people get paid now is
11 correct?

12 MR. WALLACE: Objection.

13 Q You may answer.

14 A The ones that are being sued, yes,
15 they owed them an hour. Louis would say next
16 week that they would pay them. Since the
17 lawsuit, he has been paying the defendants
18 correctly.

19 Q You know that from whom?

20 A I think through Louis Vecchia, the
21 owner of the company, the owner of Suffolk
22 Asphalt.

23 Q Mr. Quintanilla told you that he's
24 being paid correctly now; is that correct?

25 A That's what I am saying.

1 P. Mendez

2 Q Yes or no?

3 A Yes.

4 Q What is different between what
5 Mr. Quintanilla tells you he's getting paid now
6 and how you were paid when you were working for
7 defendants?

8 A The difference is that now there
9 are only eight hours. He has to be at work at
10 7:00, and they finish at 3:30, if they're at
11 work at 7:30, they finish at 4:00, and if they
12 start -- because sometimes they start at 8:00,
13 not always, but most of the time it's 7:00
14 onward.

15 Q The day is starting at the actual
16 job site, correct?

17 MR. WALLACE: Objection. When?

18 A This year, his new rule, Louis,
19 the boss, when they get to work, he says 7:00,
20 that's when he starts paying them until they
21 finish the job.

22 Sometimes if at 3:30 the job has
23 not been finished, Louis Vecchia says, finish,
24 let's go.

25 Q So part of the ten hours that

1 P. Mendez

2 you're claiming that you worked every day is
3 travel time; is that correct?

4 MR. WALLACE: Objection.

5 Q Yes or no?

6 A No.

7 Q So you're saying you were on a job
8 site for every minute of those ten hours; is
9 that correct; yes or no?

10 A I would have to be at the yard at
11 7:00.

12 Q Yes or no?

13 A After getting to the job, I would
14 only stop about ten minutes for coffee. I
15 hardly took lunch, just like I said last time.
16 I like coffee from 7-Eleven. We would stop for
17 lunch, it would only be to eat and that's it
18 with the people that I was working with.

19 Q You're not looking to get paid for
20 any travel time?

21 MR. WALLACE: Objection,
22 objection.

23 Q Yes or no?

24 A From -- I'm asking to be paid from
25 when I got to the yard until I finish the job,

1 P. Mendez

2 what he said.

3 Q You are looking to get paid for
4 travel time, correct?

5 MR. WALLACE: Objection.

6 A My overtime, that's what I'm
7 asking for, yes.

8 Q Look at me, sir, are you looking
9 to get paid for any of the time that you spent
10 traveling to the job site; yes or no?

11 MR. WALLACE: Objection, asked and
12 answered.

13 A Mr. Attorney, he told me to be
14 here, he gave me the order to be here at
15 9:00 a.m. I was here, I almost passed at
16 about -- when he called me that he was going to
17 arrive a little late because there was a little
18 accident, I went to the 7-Eleven to buy coffee.

19 Q Because you --

20 A I was there in the parking lot
21 before 9:00, fifteen minutes before 9:00,
22 because that's how I am. If they give me an
23 order, I like to be there.

24 Q That's a very interesting story,
25 but it's not relevant at all. Although, you did

1 P. Mendez

2 disclose confidential attorney/client
3 information, thus waiving any right that you may
4 have to assert thereafter.

5 MR. WALLACE: Objection.

6 Q My question is -- and you do not
7 get ask questions. My question is: Are you
8 looking to get paid as part of this lawsuit for
9 travel time; yes or no? Just answer the
10 question.

11 A I'm going to say something else.

12 Q You are not.

13 A What about what you just said? So
14 Mr. Louis Vecchia is not supposed to go speak
15 with me, he's not supposed to offer \$5,000 so
16 that all of this would end.

17 Is that what you're saying,
18 because you're saying that because he called me
19 to tell me that he's going to arrive fifteen or
20 twenty minutes late, I think he has the right to
21 say what's happening, but what I think -- that's
22 wrong is that he offered me \$5,000 to forget
23 everything because everything that they're going
24 to pay here, he could give us.

25 And he is going to pay \$80,0000 to

1 P. Mendez

2 \$100,000 in attorney fees. Excuse me for
3 raising my voice, but I am getting upset.

4 Is that proper, that in an
5 attorney's office he is offering me \$5,000 and
6 then goes and tells you, the attorney, is that
7 proper?

8 Q Mr. Mendez, you are not an
9 attorney, you have filed a lawsuit.

10 Do you understand that?

11 A I understand.

12 Q As a result of you filing that
13 lawsuit, I am here today to ask you questions.

14 Do you understand that?

15 A Yes, I understand.

16 Q Thus far, you have displayed a
17 complete inability to answer the questions that
18 are posed before you.

19 MR. WALLACE: Objection.

20 Q Do you understand that?

21 MR. WALLACE: Objection.

22 A Yes.

23 Q Because of your refusal to answer
24 even the most basic questions, you are ensuring
25 that this deposition is going to take

1 P. Mendez

2 substantially longer than it needs to take.

3 I'm going to advise you, again,
4 that at this deposition, you do not get to ask
5 questions, that you must answer the questions
6 that are posed to you.

7 Do you understand that?

8 A I understand.

9 Q Do you understand?

10 A Yes.

11 MR. WALLACE: Objection, asked and
12 answered.

13 Q Do you understand that you're
14 under oath?

15 A I understand.

16 Q Do you understand that you have
17 sworn to tell the truth?

18 A Yes.

19 Q If you do not tell the truth, you
20 are committing perjury.

21 A Yes.

22 Q There are legal ramifications for
23 doing so.

24 A Yes, I understand.

25 Q You are just going to answer the

1 P. Mendez

2 questions that I ask of you.

3 Do you understand that?

4 MR. WALLACE: Can I have a break?

5 Q If you are unable to answer a
6 question, you have an obligation to tell me that
7 you can't answer that question.

8 Do you understand that?

9 A Yes.

10 Q If you provide an answer to a
11 question that I ask you, it will be assumed that
12 you understood that question.

13 Do you understand that?

14 A Yes.

15 Q If you have questions, you can ask
16 them of your attorney during a break.

17 Do you understand that?

18 A Yes, but --

19 Q If I ask you a question, you
20 cannot take a break until you provide an answer
21 to the question.

22 Do you understand that?

23 A Yes.

24 Q I need you to stop trying to be
25 smart or slick.

1 P. Mendez

2 MR. WALLACE: Objection.

3 Q Just answer the questions that I
4 pose of you.

5 Do you understand that?

6 MR. WALLACE: Objection.

7 A Yes. But can I say something?

8 Q No, you may not say something.

9 A No, I -- I'm not going to tell the
10 attorney -- I was not going to tell him, but you
11 want to involve me that you and Louis Vecchia --
12 you want me to say yes.

13 Q I believe you are trying to steal
14 from Mr. Vecchia, and I am entitled to ask you
15 questions about that.

16 If you were not stealing from
17 Mr. Vecchia, then there would be no reason for
18 you to be showing this particular behavior.

19 MR. WALLACE: Objection.

20 Q I will continue asking you
21 questions and you are obligated to provide
22 answers to the questions that I ask you.

23 Do you understand? I have no
24 interest in what you're going to say.

25 MR. WALLACE: This is being

1 P. Mendez

2 argumentative. You're harassing the
3 witness. If you continue this behavior,
4 I will stop this deposition and we will
5 call the Judge.

6 Q Do you understand the obligations
7 as I explained?

8 MR. WALLACE: Translate what I
9 said, please.

10 MR. ZABELL: No, absolutely not, I
11 am directing you not to. I'm going to
12 talk to him. Are you taking a break,
13 Ian?

14 MR. WALLACE: Yes, I would like to
15 take a break.

16 MR. ZABELL: Since there is not a
17 question pending, I have no objection if
18 you take a break.

19 You may take a break now, but I
20 warning you, Counselor, I will not have
21 my deposition interrupted again. Go
22 ahead, take your break.

23 MR. WALLACE: I want a discussion
24 with you off the record.

25 (Whereupon, a discussion was held

1 P. Mendez

2 off the record.)

3 (Whereupon, a recess was taken
4 from 12:01 p.m. to 12:04 p.m.)

5 Q You just had about a five-minute
6 break with your attorney, did you not?

7 A It was not five minutes.

8 Q How long would you say it was?

9 A One minute, it wasn't
10 five minutes.

11 Q You talked about this deposition,
12 did you not?

13 MR. WALLACE: Objection.

14 You have to translate this.

15 Do not disclose what we talked
16 about.

17 Q You do not have to disclose
18 specifically what you talked about other than
19 confirming that it was about this deposition. I
20 won't go beyond that.

21 MR. WALLACE: If I am directing
22 the witness, the translator has to
23 translate.

24 MR. ZABELL: That's not true. If
25 you want to coach the witness, you run

1 P. Mendez

2 the risk of getting sanctioned, and I
3 will not hesitate to call the Court.

4 MR. WALLACE: I am telling the
5 witness that he cannot reveal what we
6 spoke about.

7 MR. ZABELL: I just said I am not
8 asking for the content of your
9 conversation, just to confirm it was
10 regarding this deposition.

11 MR. WALLACE: That's improper.

12 Q Did you discuss, during this
13 break, this deposition?

14 MR. WALLACE: Objection.

15 Don't answer that.

16 MR. ZABELL: What's the basis?

17 MR. WALLACE: Because that's
18 revealing information, that's
19 attorney/client privilege. Any content
20 of the substance that we're talking about
21 is attorney/client privilege.

22 MR. ZABELL: I am advising you,
23 Mr. Wallace, to rethink that position.
24 We're going to get Judge on the line.

25 MR. WALLACE: Is it worth it?

1 P. Mendez

2 MR. ZABELL: It is.

3 MR. WALLACE: You want him to
4 disclose what we talked about?

5 MR. ZABELL: I want him to confirm
6 that you discussed this deposition during
7 the break.

8 MR. WALLACE: For what?

9 MR. ZABELL: For the purposes of
10 creating my record, and for the purposes
11 for preparing for trial, which is the
12 only reason why I'm here.

13 MR. WALLACE: That's the only
14 question you're going to ask him?

15 MR. ZABELL: I already assured you
16 that I will not go any deeper into your
17 conversation.

18 MR. WALLACE: So just repeat the
19 question.

20 Q During that break that you just
21 took with your attorney, did you discuss this
22 deposition?

23 A Yes, we --

24 MR. WALLACE: It's a yes-or-no
25 question.

1 P. Mendez

2 Q Do you remember the questions I
3 was asking you about travel time?

4 A Yes.

5 Q Are you looking to be compensated
6 for travel time?

7 A I said yes, from when I would get
8 to the yard. That's where it starts, that's
9 where my travel time begins until I get to the
10 job. When the job ended, that's where my day
11 would end.

12 Q How much travel time per day did
13 you incur?

14 A It all depends where one goes.

15 Q Can you give me the range?

16 A Could be fifteen minutes if you
17 work locally, it could be twenty minutes, it
18 could be thirty minutes.

19 When we went to the City, we had
20 to leave the yard at 5:00. How long is it from
21 the yard to the City? It all depends on where
22 you go.

23 Q Sometimes it would be two hours a
24 day; is that correct?

25 A No, less, less. I think it all

1 P. Mendez

2 depends -- I can't really say yes or no. It all
3 depends on where we would go.

4 Q Would you ever have travel time of
5 an hour a day; yes or no?

6 A I didn't understand.

7 Q Did you ever have travel time of
8 an hour a day?

9 A Yes.

10 Q Did you ever have travel time of
11 more than an hour a day?

12 A Most of the time, more or less
13 like that, because we would start at 6:30, had
14 to be at work at 7:00, 6:50, like that.

15 Q Did you have travel time when you
16 started your day at the jobs?

17 A No, I would put down -- I'll
18 repeat, I don't know if I am explaining myself.

19 When I would put down -- how do
20 you say the page, schedule, the hours that one
21 works, the time that I would get there, that's
22 what I would write down and when I would finish.

23 Q The time that you would get where?

24 A To the yard. From there, that's
25 where I would start my day.

1 P. Mendez

2 Q Did you go to the yard every day?

3 A Most of the day, yes.

4 Q Do you recall testifying earlier
5 today that there were times that you didn't
6 start at the yard?

7 A That's what I want to explain.

8 Q I am not interesting in your
9 explanations. I just want you to answer the
10 questions.

11 MR. WALLACE: Objection. The
12 witness was responding to your question.

13 Q Do you remember testifying earlier
14 today that you did not go to the yard every day;
15 yes or no?

16 MR. WALLACE: Objection.

17 A That's why I am saying that I am
18 going to explain.

19 Q I am not interested in your
20 explanations. I am directing you to only answer
21 the questions that are asked of you.

22 If you are unable to do that, then
23 I will be forced to call the Judge and have the
24 Judge admonish you.

25 Do you understand?

1 P. Mendez

2 MR. WALLACE: Objection.

3 Q Do you understand, sir?

4 A Yes, but --

5 Q I am not interest at all --

6 A You're making me seem like a liar.

7 Q You are a liar.

8 MR. WALLACE: Call the Judge.

9 A First, I am --

10 Q Please remain silent, sir.

11 A When I didn't finish a job --

12 Q Remain silent, sir.

13 MR. WALLACE: I want to state for
14 the record that the witness is responding
15 to the question and Counsel is not
16 letting him respond to the questions.

17 MR. ZABELL: Are you finished,
18 Counsel? Now you remain silent.

19 Q Do you remember testifying earlier
20 today; yes or no?

21 A Yes.

22 Q Okay, were you --

23 A The next day I would go -- and
24 this question that you're asking me -- you're
25 making me look like a liar because you want me

1 P. Mendez

2 to say that I didn't go to the yard.

3 Most of the time -- I will repeat
4 again, most of the time, we would go to the
5 yard. If I didn't finish a job, then from the
6 house, I would go straight to the job, but I
7 would write down, not from when I left the
8 house, I would write from 7:00 on, because most
9 of the days, it's 7:00, like that.

10 Q Do you have the ability to
11 understand questions that are asked of you?

12 MR. WALLACE: Objection.

13 A Yes.

14 Q Do you know how to answer a
15 yes-or-no question?

16 A You make me look like a liar, yes,
17 but --

18 Q No, no, but if you think that the
19 words that come out of your mouth make you look
20 like a liar, that's your concern.

21 MR. WALLACE: Objection.

22 Q Your obligation here is simply to
23 answer the questions I ask you.

24 A That's what I am doing.

25 Q Thus far, you have the complete

1 P. Mendez

2 inability to do so.

3 MR. WALLACE: Objection.

4 Q That makes you look like a liar.

5 MR. WALLACE: Objection.

6 Q I am going to ask you to try to
7 restrain yourself to just answering the
8 questions that are being asked of you.

9 Do you understand that?

10 A Yes, I understand that. But don't
11 try to involve me in things that aren't true.

12 Q Like this lawsuit?

13 A No. You're asking first and I
14 explained, most of the time, I went to the yard
15 once in awhile to work.

16 Q Do you know there is no question
17 before you?

18 A The question that you just asked
19 me saying that I had lied, saying that I only
20 went to work in the yard --

21 MR. WALLACE: Can we take a break?
22 I think we're stuck on a really silly
23 point.

24 MR. ZABELL: You're asking to take
25 a break?

1 P. Mendez

2 MR. WALLACE: You're clearly sort
3 of -- I think you should ask it another
4 way, a less accusatory way.

5 MR. ZABELL: If you want to take a
6 break, I will allow you to take a break
7 because there is no question before him.
8 I have no interest in waiting here for a
9 minute while you make that decision.

10 MR. WALLACE: I'm just going to
11 say, this is a waste of time.

12 (Whereupon, a recess was taken
13 from 12:17 p.m. to 12:20 p.m.)

14 Q Are you prepared to proceed?

15 A Yes.

16 Q Are you prepared to behave?

17 MR. WALLACE: Objection.

18 Q You may answer.

19 A Yes.

20 Q Do you know what travel time is?

21 A Yes.

22 Q Are you looking to be compensated
23 for travel time?

24 MR. WALLACE: Objection, asked and
25 answered five times.

1 P. Mendez

2 Q You may answer.

3 A Yes.

4 Q Do you know what your union
5 contract says about travel time?

6 A You don't want me to explain, but
7 I know what he says and his rules. I said that
8 from the beginning.

9 Q What does the union say about
10 travel time?

11 A If it's a foreman, they give him
12 the pick-up and everything, and they pay them
13 from when they get to the yard; workers, they
14 just send them to the job.

15 Q Were you just sent to the job?

16 MR. WALLACE: Objection, asked and
17 answered.

18 A No, no, to go to the yard.

19 Q What did you do in the yard every
20 morning?

21 A The same that I say before, to get
22 the list to see where I was going.

23 Q You weren't given that list the
24 day before?

25 A No.

1 P. Mendez

2 Q You weren't told where to go the
3 day before?

4 A No.

5 Q Did you see any postings in the
6 workshop saying that you were supposed to go
7 directly to the worksite every morning?

8 A Many times.

9 Q So you saw it many times?

10 A No, you're not letting me finish.

11 Q I am, in response to the question
12 that I asked you. Stop, stop, just answer the
13 questions I ask you, sir.

14 Do you understand that?

15 A Yes.

16 MR. ZABELL: At this point, I am
17 going to take a break.

18 A I understand, Mr. Attorney.

19 Q Stop --

20 A I would call at 3:00 p.m.
21 sometimes Tommy, sometimes Louis Vecchia to find
22 out where I was going to go to work, but they
23 weren't finished with the schedule yet. That's
24 why every morning, we went to the yard to pick
25 up the sheet.

1 P. Mendez

2 MR. ZABELL: Ian, do you have the
3 ability to control your client?

4 MR. WALLACE: He's responding.

5 MR. ZABELL: He could not be
6 hurting himself any more.

7 Q Sir, your job here is to answer
8 questions I ask you. If you cannot do that, I
9 will call the Judge and advise the Judge. You
10 are guaranteeing that you're going to be here
11 much longer than you have to.

12 I am trying to help you, and I am
13 trying to help you get out of here as quickly as
14 possible, but because you have little ability to
15 answer the questions, you are unnecessarily
16 making this longer than it needs to be.

17 Do you understand that?

18 MR. WALLACE: Objection.

19 A Yes.

20 Q Do you have the ability to just
21 answer the questions I ask you?

22 A Let me just say two little things.

23 Q I am not interested in what you
24 have to say, so I will not let you say two
25 little things other than --

1 P. Mendez

2 A You're asking if someone let me
3 know one day before. That's what I am trying to
4 explain. Sometimes they didn't have the
5 schedule ready. How would I answer something if
6 you don't let me finish?

7 Sometimes he would make the
8 schedule, Tommy, the supervisor, sometimes
9 worked with us or the other groups and he had to
10 go and do the time sheet.

11 I would call sometimes 3:30 or
12 4:00, and he would say it was not ready and we
13 didn't know where we had to go. Every morning,
14 we had to go at 6:30 to find out where we had to
15 go.

16 Q Who is the "we" that you're
17 referring to?

18 A The whole group had to go to pick
19 up at that time, at the time that you said.

20 Q Didn't you say only the supervisor
21 had to go?

22 MR. WALLACE: Objection.

23 A What do you mean -- no, no, no, I
24 didn't understand the question.

25 Q Didn't you testify that only the

1 P. Mendez

2 supervisor had to go in the morning?

3 A No.

4 Q Are you lying then or are you
5 lying now?

6 A What I am saying is that the
7 supervisor has the list of where we had to go
8 the following day. Sometimes he worked and
9 Louis Vecchia had to prepare the order of where
10 we had to go the next day.

11 Q Are you finished?

12 A Yes.

13 Q Do you understand the answer that
14 you just gave?

15 A Yes, I understand it.

16 Q Do you remember what you testified
17 about earlier today?

18 MR. WALLACE: Objection.

19 A Yes.

20 Q What union were you a member of?

21 A 138.

22 Q When you became a member of 138,
23 did you receive a collective bargaining
24 agreement?

25 A A little book, right.

1 P. Mendez

2 Q Did you read it?

3 A Most of it, I read what pertains
4 to me.

5 Q Did you read it in Spanish or
6 English?

7 A English.

8 Q Do you read English?

9 A Not well, well, but I haven't gone
10 to school. I don't know how to write it, but I
11 can read, more or less.

12 Q Did you read any of the legal
13 documents that have been exchanged amongst
14 Counsel in this case?

15 A What I read -- I read about the
16 position that one has when they paid him how --
17 because in that book, if you see, it could be
18 138.

19 Q What question are you answering?

20 A The one that says if I read what
21 they had sent me.

22 Q Do you know who your attorney is?

23 A Yes.

24 Q Who is your attorney?

25 A Ian Wallace and Lauren.

1 P. Mendez

2 Q Did you ever pay Ian Wallace or
3 Lauren anything?

4 MR. WALLACE: Objection.

5 Q You may answer.

6 A Yes, I remember, yes.

7 Q How much have you paid them?

8 A I think it was for the case that
9 Louis Vecchia is suing me for.

10 Q Do you remember advising me at the
11 last deposition that you never paid them
12 anything?

13 A I didn't say them, that I had not
14 paid them. I said that I didn't remember.

15 Q That's not true.

16 MR. WALLACE: Objection.

17 A That's what I said, that I didn't
18 remember if I had paid them.

19 Q How much did you pay them?

20 MR. WALLACE: Objection.

21 A \$500 for the case, the case that I
22 owe Louis Vecchia \$25,000.

23 Q I agree.

24 Did you ever sign an agreement
25 spelling out how much you have to pay your

1 P. Mendez

2 attorneys?

3 A I don't remember, but they did
4 give us a package where it explains everything.

5 Q Did you sign anything in that
6 package?

7 A In that one, I'm not sure, but we
8 do have an agreement, yes, we do.

9 Q What's that agreement?

10 A It's not an agreement, it's what
11 they're going to -- I don't know. Thirty -- I
12 don't know. The package comes -- it came in
13 English, just like last time when I was here a
14 full day. They send it to me in English. It's
15 almost more than a hundred pages; if they sent
16 it to me in Spanish, it's better.

17 Q Did you tell them to send it to
18 you in Spanish?

19 A No. What I said here, I did what
20 they asked me to do.

21 Q Did you do what they asked you to
22 do, or did you do what they told you to do?

23 A They're going to send one in
24 Spanish, as well.

25 MR. WALLACE: Objection.

1 P. Mendez

2 A They sent it to me.

3 Q Who sent it to you?

4 A Lauren.

5 Q What did she send to you?

6 A Everything that I declared last
7 time.

8 Q What did you declare last time?

9 A It's almost the same that you
10 asking me now.

11 Q What are you talking about?

12 MR. WALLACE: Discussion off the
13 record.

14 MR. ZABELL: No, let him answer
15 the question.

16 MR. WALLACE: It's irrelevant.

17 MR. ZABELL: It's not irrelevant.

18 MR. WALLACE: It's a waste of
19 time, he's confused.

20 Q What are you talking about?

21 A You're asking if I signed a paper,
22 I signed papers for just -- like I signed a
23 paper for him, that's it.

24 Q Do you have any idea what those
25 papers said?

1 P. Mendez

2 A He explained it.

3 Q Mr. Vecchia explained it?

4 A No -- what are you talking about?

5 Aren't you talking about -- you're confused
6 because you're talking about one thing, about
7 the deposition, about this, nothing else.

8 Q What document are you talking
9 about that you signed?

10 A Their contract.

11 Q Whose contract?

12 A They were going to send here.

13 Q Who was going to send here?

14 A When they sent my boss, Louis, the
15 paper.

16 Q Are you talking about the retainer
17 between yourself and your attorney?

18 A No, you confused me. Continue
19 with the questions.

20 Q You said you signed a document.
21 Do you know what that document
22 said; yes or no?

23 A No.

24 Q So you signed a document that you
25 have no idea what it said; is that correct; yes

1 P. Mendez

2 or no?

3 A When I don't understand
4 something --

5 MR. WALLACE: He is trying to
6 respond to the question.

7 A When I don't understand something,
8 I ask him or my daughter what it says; if I have
9 to sign something, I sign it.

10 Q So you said you signed a document
11 that was given to you by your attorneys and you
12 said that you either asked your attorneys or
13 your daughter to explain it; is that correct?

14 A Yes, like I said, if they're
15 papers that I think are important.

16 Q So what documents did you sign?

17 A I signed one with him when I give
18 him \$500.

19 Q What did you give him \$500 for?

20 A That's what I was trying to
21 explain, for the suit that he has started with
22 me, that's what I was trying to explain to you.

23 Q When did you give him \$500?

24 A That's what I don't remember,
25 because when I received the suit, what I did was

1 P. Mendez

2 I sent it to them, and I said, like I said last
3 time, I had not received it but someone in my
4 family had found it on the desk at home.

5 So when I read it, I saw that
6 Louis Vecchia's name was there, I sent it to
7 them, my attorneys. And I asked them about
8 that, what it was.

9 Q When did you pay your attorneys
10 \$500?

11 A It's just that I don't remember
12 the day, I don't remember the day.

13 Q Do you remember if it happened
14 before or after the last deposition date?

15 A No, it was before.

16 Q How come at your last deposition
17 you lied and said that you did not pay them
18 anything?

19 MR. WALLACE: Objection, asked and
20 answered.

21 Q You may answer.

22 A I said that I didn't remember.

23 Q No, you said that you did not pay
24 them.

25 How come you lied at that

1 P. Mendez

2 deposition?

3 A What I remember is that I said
4 that I didn't remember if I had paid or not.

5 Q If the deposition says that you
6 did not pay, you were clearly lying; is that
7 correct?

8 MR. WALLACE: Objection.

9 A Yes, but I remember that I said I
10 don't remember.

11 Q If it says something different
12 than that, you were lying?

13 MR. WALLACE: Objection.

14 Q Yes?

15 A Yes, if there is a difference,
16 then maybe yes.

17 Q Do you know Nelson Quintanilla?

18 A Yes.

19 Q Do you know if he goes by any
20 other names?

21 A Nelson Quintanilla, that's how I
22 knew him from before.

23 Q Nelson Quintanilla?

24 A Those are the two names that I
25 know him by.

1 P. Mendez

2 Q Do you know why he goes by
3 different names?

4 A I don't know.

5 Q Do you know how many hours a day
6 Nelson Quintanilla worked for the defendants?

7 A Like I said, that group was
8 separate from mine. I can't really say yes, no,
9 that's a different group. But we had to work
10 ten hours the same for them to pay eight hours.
11 That's what I know about everyone.

12 Q Did Nelson Quintanilla work the
13 same schedule as you?

14 A Sometimes he worked even more.

15 Q And sometimes he worked less?

16 MR. WALLACE: Objection.

17 A No, it was the paving crew.

18 Q Did you work with Nelson
19 Quintanilla every day?

20 A No.

21 Q Did you work with him at all?

22 A Many times, sometimes.

23 Q Is it many times or is it
24 sometimes?

25 A He, Louis Vecchia -- I had a

1 P. Mendez

2 group, my group was the setup crew. Where
3 Nelson worked was the paving crew, so there were
4 two different groups.

5 Q So you didn't work with Nelson
6 Quintanilla every day?

7 A Not every day.

8 Q You don't know his schedule?

9 MR. WALLACE: Objection.

10 A Normally, everyone -- we would all
11 see each other at 6:30 in the morning and in the
12 afternoons, it's different.

13 Q So Nelson Quintanilla may have
14 worked a different schedule than you?

15 A In the morning, almost everyone
16 was the same.

17 Q But in the evening, everyone was
18 different?

19 A Sometimes they worked very late.

20 Q And sometimes not as late as you,
21 correct?

22 MR. WALLACE: Objection.

23 A Normally ten, eleven hours, mostly
24 much, much more.

25 Q How do you know that?

1 P. Mendez

2 A Because they're always saying what
3 time they had gotten out the day before when
4 they had worked most of the time.

5 Q And you believed them?

6 A Yes. Because even the drivers
7 were there.

8 Q Didn't your attorney show you the
9 GPS record to show you how many hours they
10 actually worked?

11 MR. WALLACE: Objection.

12 A GPS, I don't think so.

13 Q Do you know Alejandro Amaya?

14 A Yes.

15 Q Did he work in your crew?

16 A He is -- yes, yes. And he is one
17 of the best workers that Louis Vecchia had.

18 Q Do you know what time of day he
19 started?

20 A From -- if we had to be at the
21 yard, at 6:30.

22 Q Did you drive Alejandro Amaya to
23 work?

24 A Like I said, he would take his car
25 to the house and from the house, I would take

1 P. Mendez

2 him to the yard.

3 Q So the simple answer to my
4 question, if you were capable of answering the
5 question, would be yes?

6 A Yes.

7 Q Why aren't you giving me the
8 simple answers?

9 A It's the simple one for me.
10 That's the truth, what I'm saying.

11 Q So you drove Alejandro Amaya to
12 work every day; is that correct?

13 A A lot of times, yes, he was with
14 the workers that worked with me more.

15 Q He could have driven directly to
16 the worksite; is that correct?

17 A Yes, but the rules were to go to
18 the yard, yes.

19 Q Do you know Alex Amir Arevalo?

20 A Yes.

21 Q Was he in your crew?

22 A Sometimes, not much.

23 Q Are you familiar with his work
24 schedule?

25 A He was more so mechanic helper.

1 P. Mendez

2 Q He did not work your schedule; is
3 that correct?

4 A What did you say?

5 Q He did not work your work
6 schedule; is that correct?

7 A No. He was in the yard. He
8 worked with me sometimes.

9 Q But not all the time?

10 A No.

11 Q He mainly worked in the yard; is
12 that correct?

13 MR. WALLACE: Objection.

14 A Yes. They would send him to work
15 sometimes with the paving crew.

16 Q Did you see Alex Amir Arevalo in
17 the morning?

18 A Sometimes and sometimes not.

19 Q Do you know Maynor Fajardo?

20 A Yes.

21 Q Do you know on how many occasions
22 Maynor Fajardo disappeared from work to leave
23 the country?

24 A Yes, I recall.

25 Q On how many different occasions

1 P. Mendez

2 did he do that?

3 A From what I recall, only one, I
4 think.

5 Q Do you know how long he
6 disappeared for?

7 A I know that he disappeared -- I
8 don't know, for six, five months, but I'm not
9 sure. I don't want to -- there wasn't much
10 communication with him. There was
11 communication, but I would say hello or how are
12 you. I wouldn't call him every night.

13 Q Did you work the same schedule as
14 him?

15 A In the morning, yes.

16 Q But in the afternoon, you don't
17 know?

18 A No.

19 Q He was not part of your crew?

20 A He had the paving crew, the boss
21 of the paving crew.

22 Q Do you know Walter Garcia?

23 A Yes.

24 Q Was Walter Garcia in your group?

25 A Sometimes. Sometimes Louis

1 P. Mendez

2 Vecchia would send him. He would send me to
3 work with the paving crew or sometimes a
4 different group.

5 Q Did you drive Walter Garcia to
6 work?

7 A No, no, no, hardly. The same, if
8 he had to go home, leave the car at home but I
9 hardly worked with Walter, a short time.

10 Q Do you know Jose Martinez?

11 A Yes.

12 Q Was Jose Martinez in your crew?

13 A Not much, a little bit, the most
14 was Alejandro.

15 Q Do you know what Jose Martinez's
16 work schedule was?

17 A It was the same that the paving
18 crew had when he worked with the paving crew.

19 Q Do you know what the work schedule
20 was for the paving crew?

21 A The same; like I said, from 6:30
22 on.

23 Q At 6:30, you're saying that's the
24 time you arrived at the shop; is that correct?

25 A Yes.

1 P. Mendez

2 Q That's not when you arrived at the
3 worksite?

4 A No. To the yard.

5 Q Do you know Osmar Pagoada?

6 A Yes.

7 Q Was he in your crew?

8 A No, no, hardly, maybe once or
9 twice. I can't really say; once or twice, very
10 little.

11 Q Are you familiar with Osmar
12 Pagoada's work schedule?

13 A It's just that they were -- most
14 of them were in the paving crew, that was the
15 paving group.

16 Q Do you know who Javier Quintanilla
17 is?

18 A Yes.

19 Q Who is Javier Quintanilla?

20 A That is Nelson Quintanilla's
21 brother.

22 Q Was he in your crew?

23 A He was one of the -- he worked,
24 too, here with me also; Javier first and then it
25 was Alejandro.

1 P. Mendez

2 Q What year did Javier work with
3 you?

4 A I couldn't really say, but I think
5 Alejandro worked three years with me.

6 Q Alejandro who?

7 A Alejandro Amaya.

8 Q But I am not asking you about
9 Alejandro Amaya. I am asking you about Javier
10 Quintanilla. Try and stay focused.

11 A It was Javier first, then it was
12 Alejandro. That's why I'm saying that the rest
13 of them didn't work with me, just those two
14 persons were the ones that worked mostly with
15 me.

16 Q But you have no idea what years
17 they worked with you, correct?

18 A I couldn't specify the days that
19 Javier worked, the day of the year, but it was
20 before Alejandro.

21 Q Do you know when Alejandro worked
22 with you?

23 A I think it was three or
24 four years; from 2009, back three or four years.

25 Q Are you sure?

1 P. Mendez

2 A Yes.

3 Q Do you know who Edwin Rivera is?

4 A Yes.

5 Q Who is Edwin Rivera?

6 A Someone that also worked with the
7 paving crew.

8 Q Do you know what his hours were?

9 A The same as the paving.

10 Q Do you know what those hours were?

11 A From 6:30, 5:00 in the morning,
12 7:00 a.m., at 5:00, at 6:00, at 7:00, at 8:00,
13 at 9:00 at night.

14 Q Is that what you're saying that
15 was the range of hours for all of the people
16 that worked for defendants?

17 MR. WALLACE: Objection.

18 A Those are the hours that you
19 worked there.

20 Q Do you know Carlos Escalante?

21 A Yes.

22 Q Who is Carlos Escalante?

23 A Another person who also worked for
24 the paving crew.

25 Q Do you know what his hours were?

1 P. Mendez

2 A The same as them.

3 Q Are you sure?

4 A Yes.

5 Q Did anybody leave a job site early
6 because they were not feeling well?

7 A That, I don't know. I was worried
8 about my own job, finishing my day and the rest.
9 I don't know if anyone had a headache.

10 Q When you went to a job, you just
11 cared about your schedule and nobody else's?

12 MR. WALLACE: Objection.

13 Q Yes or no?

14 A He would give me a work order and
15 I would finish it.

16 Q Do you know who Kevin Galeano is?

17 A Yes.

18 Q Who is Kevin Galeano?

19 A He also worked for him, and
20 sometimes they would send him with an operator,
21 whose name is Salvatore.

22 Q Do you know what Kevin Galeano's
23 work schedule is?

24 A Repeat -- he had to be there more
25 or less at the same time, at 6:30, and the rest

1 P. Mendez

2 is normal.

3 Q How many guys are with a paving
4 crew?

5 A It all depends, sometimes he would
6 send five, six, seven, eight; there was a lot of
7 work, there would be a lot of people.

8 Q How many people would be in a
9 paving crew?

10 A He would give me only one, and
11 sometimes when I had a lot of work, I would ask
12 him for another one.

13 Q Would you get another person?

14 A Sometimes they would give him to
15 me, and sometimes he would say no.

16 Q Did you always get your work done?

17 A Most of the time, yes, that's
18 why -- sometimes I had to stop my machine and
19 work.

20 Q Does that bother you, that you had
21 to stop the machine and do the work yourself?

22 A Never.

23 Q That was your job, to do the work,
24 correct?

25 A Yes.

1 P. Mendez

2 Q Do you know who Lerly Noe

3 Rodriguez is?

4 A Yes.

5 Q Who is Lerly Noe Rodriguez?

6 A He worked on the paving crew. He

7 is a roller.

8 Q Do you know what his work hours

9 are?

10 A The same, almost as the paving

11 crew.

12 Q Almost, but not the same?

13 A He sometimes would arrive earlier

14 than anyone else because sometimes he would have

15 to drive, and he would go to prepare the things

16 in a box truck.

17 Q What were the names of the people

18 on the paving crew?

19 A All of the ones that you

20 mentioned.

21 Q What are those names?

22 A Starting with the bosses, it's

23 Renato.

24 Q Is that the same as Maynor?

25 A That's how I met him, then I

1 P. Mendez

2 realized that was Maynor. Carlos is the second
3 one, Edwin, Noe, Victor, Walter -- oh, I forget
4 the other one, what's his name? His name is --
5 he doesn't work much, Osmar, and Jose Martinez.

6 Q Which one of them didn't work
7 much?

8 A Like I said, Osmar didn't work
9 there for very long, but the ones that were more
10 in the crew were the other ones; Maynor, Edwin,
11 Carlos, and yes, just those.

12 Q Do you know who Marcus Tulio Perez
13 is?

14 A Yes, I forgot him, Tulio, they
15 call him Tulio.

16 Q Who is "they"?

17 A He also worked for the paving
18 crew.

19 Q Do you know what Marcus Tulio
20 Perez's hours were?

21 A The same as the others.

22 Q How do you know that?

23 A Because they would give us an
24 order to get to the yard at 6:30. If someone
25 had to go with a different operator, so they

1 P. Mendez

2 would say tell such-and-such a person to go with
3 such-and-such a person to be at the yard at a
4 certain time, that's it.

5 Q Do you know who Jose Vega Castillo
6 is?

7 A Yes.

8 Q Who is Jose Vega Castillo?

9 A He also worked with a paving crew.

10 Q Did you work with him on a regular
11 basis?

12 A Not much, very little.

13 Q So you don't know what his actual
14 hours were?

15 A Only in the morning.

16 Q Do you know who Juan Quinteros is?

17 A Yes.

18 Q Who is Juan Quinteros?

19 A He's been working there for a
20 short time and the paving crew, as well.

21 Q From what period of time to what
22 period of time did he work?

23 A I really can't tell you. I think
24 he's been there two years, I think.

25 Q You worked a different schedule

1 P. Mendez

2 than most people that I just identified; is that
3 correct?

4 MR. WALLACE: Objection.

5 A In the morning, everything the
6 same, almost everything the same.

7 Q Except when you would show up
8 directly on a job site, correct?

9 MR. WALLACE: Objection.

10 A Yes, and many few times.

11 Q Many few times?

12 A A few time.

13 Q Your work schedule was affected by
14 the weather, was it not?

15 A Yes. There are days that it's
16 bad, yes.

17 Q If it's bad, how does the weather
18 affect it?

19 A They would send us home, sometimes
20 we had to work even with water.

21 Q Did you ever keep track of how
22 many times you were sent home because of the
23 weather?

24 A No.

25 Q Could I ask you to wake up your

1 P. Mendez

2 attorney?

3 MR. WALLACE: I'm awake, I just
4 closed my eyes. I'm closing my eyes.
5 I'm alert. I'm listening to everything,
6 don't worry.

7 Q At the last deposition, your
8 Counsel represented that they would provide me
9 with a copy of your passport.

10 Do you have that passport here?

11 A No.

12 Q Why not?

13 A No. Because it seems that they
14 said no one was going to ask about immigration
15 papers.

16 Q That's not correct.

17 MR. WALLACE: Objection. For the
18 record, there is a protective order in
19 place regarding immigration status.

20 MR. ZABELL: No, Lauren advised at
21 the last deposition that she was going to
22 provide it.

23 MR. WALLACE: Prior to the
24 protective order.

25 MR. ZABELL: It's a representation

1 P. Mendez

2 that she made that you have an obligation
3 to continue.

4 MR. WALLACE: Pertaining to
5 passports, that has been excluded by the
6 protective order.

7 THE WITNESS: But if you want, I
8 can send it -- bring it tomorrow, or
9 later --

10 MR. WALLACE: Objection. For the
11 record, I will decided what's produced in
12 this case.

13 Can you translate?

14 MR. ZABELL: We will bring it up
15 to the Court.

16 Q When was the last time you went
17 back to El Salvador?

18 A Well, the last time you told me --
19 I only mentioned when I was working for him,
20 two years ago. The problem that happened with
21 my sister, that -- I didn't mention that I went
22 in June of this year, yes, June.

23 Q From 1998 to 2009, how many times
24 did you go to El Salvador?

25 A Only one time when I said the last

1 P. Mendez

2 time, one time.

3 Q When was that?

4 A The exact date, the year was -- I
5 think -- I don't remember much, but I think it
6 was about February, a week -- let me see, let me
7 see. I think it was the 16th when I left and I
8 was there three weeks.

9 Q The 16th of what month?

10 A I think it was February. I have
11 to check the year.

12 Q Do you have an idea of what year?

13 A Let me see. I'm not sure if it
14 was 1997 or 1998, but it was -- I told my boss,
15 Louis, because I had not seen my mother or
16 family in about twenty years, yes.

17 Q Is that the only time you left the
18 country since 1998?

19 A Yes, I said yes. And in June of
20 this year, but that was separate.

21 Q You never left the country any
22 other time?

23 A No.

24 MR. WALLACE: Objection.

25 What period of time are you

1 P. Mendez

2 talking about?

3 MR. ZABELL: We have our answer.
4 I'm going to ignore your question.

5 MR. WALLACE: It's an objection
6 for the record. It's not directed at
7 you.

8 MR. ZABELL: It's not directed at
9 me? Who can it possibly be directed at?

10 MR. WALLACE: It does not require
11 your response or your authorization. I
12 am objecting on the record.

13 MR. ZABELL: The purpose of your
14 question?

15 MR. WALLACE: You shouldn't have
16 asked the question.

17 MR. ZABELL: Did you just say, I
18 shouldn't have asked the question?

19 MR. WALLACE: The question was an
20 improper question, because it was not
21 related to this time period, it was
22 leading, it is also --

23 MR. ZABELL: Ian, nobody is asking
24 you for a speaking objection.

25 MR. WALLACE: What are you asking,

1 P. Mendez

2 then?

3 MR. ZABELL: I am asking you to
4 remain silent.

5 MR. WALLACE: You're asking me to
6 remain silent in this deposition?

7 MR. ZABELL: Yes.

8 MR. WALLACE: Who do you think you
9 are?

10 MR. ZABELL: Your role is to
11 remain silent. You can object to the
12 form of the question, that's fine.

13 MR. WALLACE: That's what I am
14 doing.

15 MR. ZABELL: Do not make speaking
16 objections and do not ask questions of
17 your own.

18 MR. WALLACE: You asked a
19 question, which I was objecting to and I
20 answered it.

21 MR. ZABELL: Ian, please, just
22 remain silent.

23 MR. WALLACE: Saul, we're both
24 above it.

25 MR. ZABELL: Apparently not, just

1 P. Mendez

2 remain silent.

3 MR. WALLACE: Ask your next
4 question.

5 Q Do you know what grease time is?

6 A Yes.

7 Q What's grease time?

8 A It's to grease the machine that
9 you have for a half hour.

10 Q Did you ever get paid for grease
11 time?

12 A Not at the beginning. Afterwards,
13 he would pay half hour, whenever he remembered.

14 Q You would get paid grease time,
15 but you wouldn't always grease the equipment,
16 correct?

17 A I would always grease my machine.
18 I was always asking the mechanic for grease.

19 Q What mechanic would you ask for
20 grease?

21 A His name is George.

22 Q George what?

23 A I don't know his last name.

24 Q Did your paychecks indicate that
25 you were paid grease time?

1 P. Mendez

2 A Not at the beginning, but then
3 later, sometimes, yes.

4 Q Later from what period of time to
5 what period of time?

6 A At least the first -- almost the
7 first two years, three years he wouldn't pay us
8 grease time. Then, one hour would show,
9 two hours, two-and-a-half hours, that was the
10 most, two-and-a-half hours.

11 Q From 1998 to 2001, you were not
12 paid for grease time?

13 A What date did you say?

14 Q 1998 to 2001.

15 MR. WALLACE: Objection.

16 Q You may disregard the objection
17 and provide an answer.

18 A Before the union, he never
19 mentioned that or paid it. After the union,
20 like I said, the first two years, he hardly
21 paid. Then, he was paying one hour, two hours,
22 two-and-a-half hours.

23 Q How many hours a week were you
24 supposed to get grease time?

25 A It's supposed to be a half hour

1 P. Mendez

2 per day.

3 Q If it's supposed to be a half hour
4 per day and you got two-and-a-half hours per
5 week, didn't you get a half hour per day?

6 A Yes.

7 Q If you didn't get paid grease
8 time, shouldn't you have complained to the
9 union?

10 A I was supposed to, yes.

11 Q But you never complained to the
12 union?

13 A No.

14 Q In fact, the only time you ever
15 complained about your pay was in this lawsuit;
16 is that correct?

17 MR. WALLACE: Objection.

18 A Many times, they would send me
19 pages to fill out stating the hour that I would
20 start work and finish work, and once I told
21 Louis, the boss, and he said that if I did that,
22 I would -- it bothered him.

23 Sometimes in order to cover him, I
24 didn't do things that I was supposed to do.

25 Q You didn't want to bother Louis;

1 P. Mendez

2 is that correct?

3 A At the beginning, I tried not to
4 hurt people, and I never gave the union
5 complaints.

6 Q In the beginning, you didn't want
7 to hurt anybody; is that correct?

8 A You know --

9 Q Yes or no?

10 MR. WALLACE: He's responding.

11 Q You don't mind hurting people?

12 MR. WALLACE: Objection.

13 Q Yes or no?

14 A No, it's not hurting. It's not
15 the name of Louis Vecchia. It's with the
16 company that he's in charge of because he
17 doesn't pay overtime.

18 Q You know you're suing Louis
19 Vecchia; did you know that?

20 A I am suing Suffolk Paving, Suffolk
21 Asphalt. The owner of those companies was Louis
22 Vecchia and also Christopher Vecchia and Helene
23 Vecchia.

24 Q So you know you're suing Louis
25 Vecchia, individually?

1 P. Mendez

2 A Yes.

3 Q You know you're suing his family?

4 A Yes.

5 Q You know you're suing his wife?

6 A No, no --

7 Q Yes or no?

8 A Yes.

9 Q His son?

10 A Yes, I said yes.

11 Q Does Helene Vecchia own any of the
12 defendant companies?

13 A Helene Vecchia and Louis Vecchia
14 are the ones that run the company.

15 Q Do you know if Helene Vecchia owns
16 any of the companies?

17 A Yes. If she is the wife of the
18 boss, why not? Something else?

19 MR. WALLACE: Do you have a
20 question?

21 MR. ZABELL: I have lots of
22 questions.

23 MR. WALLACE: Just for the record,
24 Mr. Zabell is just pausing for about a
25 minute at this point.

1 P. Mendez

2 MR. ZABELL: I disagree with
3 Mr. Wallace's characterization. I would
4 like to think that he would be a little
5 more honest with his representations on
6 the record, but it's entirely consistent
7 with the behavior I have come to expect
8 in this litigation, disappointing as it
9 may be.

10 Q Mr. Mendez?

11 A Yes.

12 Q Does your wife know that you
13 borrowed \$25,000 from Mr. Vecchia?

14 A I think so.

15 Q Does your wife know that you did
16 not pay Mr. Vecchia that \$25,000 back?

17 MR. WALLACE: Objection.

18 A I hardly tell her about my things.

19 Q Does your wife know that without
20 the assistance of Mr. Vecchia, you would not be
21 living in your home?

22 MR. WALLACE: Objection.

23 A No, she doesn't know.

24 Q Does your wife know that you do
25 not have any documentation indicating that you

1 P. Mendez

2 paid one penny back of that \$25,000 that

3 Mr. Vecchia loaned you?

4 MR. WALLACE: Objection.

5 Q Does she know that?

6 A No.

7 Q She does not know that?

8 A But he accepted -- boss, Louis,

9 accepted that I had paid him money.

10 Q Do you know you're being sued for
11 that money?

12 A Yes.

13 Q Do you know you have no proof to
14 offer that you have repaid that money?

15 MR. WALLACE: Objection.

16 A Yes, it's possible. I said last
17 time that I had written down on some stubs the
18 days that I had paid him.

19 Q Did you give him checks for that
20 money?

21 A No.

22 Q Did you give him cash for that
23 money?

24 A It was work days, it was
25 Saturdays.

1 P. Mendez

2 Q Did you ever receive your pay in
3 the form of checks?

4 A No.

5 Q Did you ever receive payment in
6 the form of cash?

7 A Like I said, sometimes, yes.

8 Q So sometimes, you would receive
9 cash, but you never received checks. Is that
10 what your testimony is?

11 A The check that he would pay me,
12 that's what you're talking about? Yes, every
13 week, every month, checks, but sometimes, like I
14 said last time, he would give me in cash when I
15 would tell him that I didn't want cash.

16 Q How often would you tell him that
17 you didn't want cash?

18 A One time it was almost for a whole
19 month where I said no cash.

20 Q Why did you say you didn't want
21 cash?

22 A Sometimes he would say that it
23 would be cheaper for him, he said that if it
24 wasn't union work or friends of his that he
25 would send me, sometimes he would want them to

1 P. Mendez

2 pay me or he would pay me.

3 Q And you always got paid, correct?

4 MR. WALLACE: Objection.

5 A Yes.

6 Q When you got paid in cash, how
7 much did you get paid?

8 A Like I said, sometimes they paid
9 me \$300. Once, like I said last time, he gave
10 me \$1,400, \$1,500, I think it was. That was the
11 only time that he paid me the whole thing in
12 cash.

13 Q You would get paid \$300 a week?

14 MR. WALLACE: Objection.

15 A No. Like I said, sometimes he
16 would pay me, he would give me the check, and
17 sometimes he would give me \$200.

18 Q He would give you a check and \$200
19 in addition?

20 A Yes.

21 Q Sometimes you got paid \$300 a day;
22 is that correct?

23 MR. WALLACE: Objection.

24 A No. Like I said, he would give me
25 both.

1 P. Mendez

2 Q So you always got a check and
3 cash?

4 A Sometimes, yes.

5 Q Did you ever get paid prevailing
6 wage?

7 A Yes. Sometimes when we would get
8 to the union, Louis Vecchia -- when you have a
9 union, you no longer pay what you're supposed to
10 pay in prevailing wages. The amount is what the
11 union says by the book, what you have.

12 Q So on prevailing wage jobs, did
13 you get paid what you were supposed to get paid?

14 A Through the union, yes.

15 Q Do you know that you're suing,
16 claiming that you did not receive prevailing
17 wage on prevailing wage jobs?

18 A That's why sometimes there are
19 jobs, union jobs -- before he wasn't paying
20 prevailing wage.

21 Q When was he not paying prevailing
22 wage?

23 A Before the union, because if
24 someone works --

25 Q Are you talking before 2003?

1 P. Mendez

2 A No.

3 Q After 2003?

4 A After.

5 Q You know you testified earlier
6 that they joined the union in 2001?

7 A No. I said I was working -- I
8 think I joined the union in 2005 or 2006, if I
9 am not mistaken.

10 Q When you joined the union, you
11 wound up getting less pay, correct?

12 MR. WALLACE: Objection.

13 A He would give me sometimes \$1,100
14 or \$1,055 for forty hours.

15 Q And there were deductions from
16 your pay to pay union dues, correct?

17 A I would go and pay every month. I
18 would pretty much pay for the whole year.

19 Q And there were benefit payments
20 that were taken out of your pay, correct?

21 A I think they took everything out
22 of there, because I never had insurance with
23 them, but I think that they would always deduct.

24 Q Did you ever take a look at your
25 paychecks when you got them?

1 P. Mendez

2 A It would say that they would take
3 out this, this, this.

4 Q What were the specific deductions
5 taken out of your pay?

6 A I can't really say.

7 Q Why can't you say?

8 A Vacation, Medicaid, sometimes it
9 would say only three letters.

10 Q Did you ever ask?

11 A No.

12 Q How much union dues were taken out
13 of your paycheck?

14 A I think that's what I would pay
15 there monthly.

16 Q How much would you pay monthly?

17 A I'm not sure if it was twelve or
18 fourteen, because I would pay for the whole
19 year.

20 Q Twelve or fourteen what?

21 A Dollars, I think.

22 Q You would pay twelve or fourteen
23 dollars for the whole year?

24 A No, each month. I think that's
25 what that's for, the dues. If you don't pay

1 P. Mendez

2 monthly, then they call you and tell you what
3 you owe.

4 Q Do you believe that you were paid
5 prevailing wage appropriately?

6 MR. WALLACE: Objection, asked and
7 answered.

8 A Sometimes; most of the time, no.

9 Q Please identify for me the
10 projects that you worked on when you were not
11 paid prevailing wage.

12 A It's difficult.

13 Q Try real hard.

14 A It's difficult, because you
15 understand it's difficult to say it was in this
16 job and this, yes; and this one, no.

17 Q Try very hard to remember because
18 your case depends on it.

19 MR. WALLACE: Objection.

20 A No, I can't say right now.

21 Q Is there anything that can help
22 you recall?

23 A I don't know.

24 Q So the memory you have now will
25 never get any better with regard to the jobs

1 P. Mendez

2 that you did not receive prevailing wage on; is
3 that correct?

4 MR. WALLACE: Objection.

5 A What's that?

6 Q There is nothing that you can
7 think of that can help you identify the jobs
8 where you claim that you did not receive
9 prevailing wage?

10 A No. Because sometimes you would
11 do one job and most of us would ask the -- how
12 do they call them -- the inspectors, is this job
13 prevailing wage?

14 Sometimes they would say yes,
15 sometimes they would say no. So sometimes we
16 knew that it was and sometimes it didn't show up
17 on the check. Sometimes -- there is a street,
18 Old Bay Shore Road.

19 We asked the inspectors if it was
20 prevailing wage and they said yes. We asked
21 Louis Vecchia and Louis Vecchia said that the
22 street was private.

23 Q Do you know what a prevailing wage
24 job is?

25 A Now I have more of an idea of what

1 P. Mendez

2 a prevailing wage is.

3 Q Please explain to me what a
4 prevailing wage job is.

5 A Now I am working for a company
6 that works almost solely with prevailing wage,
7 jobs for the State, jobs for the schools, water
8 jobs, that's what I understand, yes.

9 Q What employer is this?

10 A What?

11 Q What's the name of your employer?

12 A Now it's Capital Concrete. They
13 pay the way it should be.

14 Q Did you ever meet with an
15 investigator from the District Attorney's
16 office?

17 A Repeat the question?

18 Q Did you ever meet with a detective
19 from the District Attorney's office, from the
20 DA's office?

21 A From this office?

22 Q DA, the district attorney.

23 A I don't remember, I don't know.

24 Q You don't remember, you don't
25 know?

1 P. Mendez

2 A If I meet with a detective or if I
3 spoke with a detective?

4 Q When did you meet with a
5 detective?

6 A No, that's my question.

7 Q You don't get to ask questions.

8 A I didn't understand the question.

9 Q Did you ever meet with a
10 detective?

11 A Yes.

12 Q Was that so difficult?

13 A No. Because you confuse me
14 because you're asking me if I spoke with
15 someone -- because now we're talking about
16 prevailing wage, and then you ask me that, so
17 you're confusing me.

18 Q When did you speak with a
19 detective?

20 A About a year or less than a year,
21 about a year, I think.

22 Q What did you tell the detective?

23 A That they asked some questions
24 about the union, about the work that we used to
25 do.

1 P. Mendez

2 Q Did they ask you questions about
3 whether or not you were paid prevailing wage?

4 A No.

5 Q Were your attorneys present when
6 they questioned you?

7 A I don't recall, I don't recall, I
8 don't recall.

9 MR. ZABELL: Let's take a lunch
10 break.

11 (Whereupon, a lunch recess was
12 taken 1:30 p.m. to 2:26 p.m.)

13 Q Mr. Mendez, before the break, we
14 were talking about prevailing wage.

15 Do you know what the prevailing
16 wage rate was in 2009?

17 MR. WALLACE: Objection.

18 Q You may answer. You may disregard
19 him and answer my question.

20 A The company that I'm working for
21 presently, if I am an operator, they pay me \$76;
22 if I'm a laborer, as they call it, they pay me
23 \$61 or \$64, it depends.

24 Q Did you work for that company in
25 2009?

1 P. Mendez

2 A No.

3 Q Why are you answering the question
4 for the company that you work for?

5 A Because you're asking me if I know
6 the amount.

7 Q In 2009, do you know what the
8 prevailing wage rate was?

9 MR. WALLACE: Renewed objection.
10 You can answer.

11 A I'm not sure, but it has to be a
12 dollar less.

13 Q A dollar less than what?

14 A The same amount as now.

15 Q Do you know what the prevailing
16 wage rate was in 2008?

17 A No.

18 Q Do you know what it was in 2007?

19 A No.

20 Q Do you know what it was in 2006?

21 A No.

22 Q Do you know what it was in 2005?

23 A No.

24 Q Do you know what it was in 2004?

25 A No.

1 P. Mendez

2 Q Do you know what it was in 2003?

3 A No.

4 Q Do you know what it was in 2002?

5 A No. But I'm referring to the
6 amount that they pay one per hour.

7 Q Do you know how much you made an
8 hour working for the defendants in 2002?

9 A I think it was thirty,
10 thirty-five, I think, thirty-five, I think.

11 Q Thirty-five what?

12 A Dollars.

13 Q Is that per hour or for a day?

14 A Per hour.

15 Q In 2003, do you know how much you
16 made for an hour's worth of work working for
17 defendants?

18 A Only when I returned, he offered
19 me that money, and he never gave me a raise when
20 I joined the union. That is when it was \$44.

21 Q In what year did it start being
22 \$44 an hour?

23 A From the beginning. 2006 is when
24 I started in the union.

25 Q Did you work for any of the

1 P. Mendez

2 defendants in 2005?

3 A I think so, yes.

4 Q How much did you make an hour in
5 2005?

6 A I'm not sure if I started in 2005
7 or 2006 with the union, but the agreement that I
8 had with him is that he was going to pay me \$200
9 a day, and he calculated, and it came out to \$35
10 in eight hours.

11 Q In 2006, how much did you earn an
12 hour?

13 A If I was already in the union --
14 like I said, I'm not sure, but I think it was --
15 I'm not sure, but I think it was \$42 or \$44, I
16 think so.

17 Q In 2007, how much did you make an
18 hour?

19 A It's just that every year the
20 union -- in about October or November, they gave
21 you like a \$1 or \$1.25 or a \$2 raise every year.

22 Q That is a great story, but it's
23 not an answer to the question that I asked you.

24 In 2007, how much did you make an
25 hour?

1 P. Mendez

2 A It's just that what I'm saying --
3 I'm not sure, but it's possible that it's \$44,
4 \$43.

5 Q You understand that if you don't
6 know an answer to a question, it's okay to say,
7 I don't know?

8 A Okay.

9 Q Do you know how much you made an
10 hour in 2007?

11 A No.

12 Q Do you know how much you made an
13 hour in 2008?

14 A I think \$44.

15 Q Why do you think \$44?

16 A Because I think I remember that it
17 was \$44. \$44, \$45, it went up in 2008 or 2009,
18 it seems, only a one dollar difference or
19 something like that.

20 Q Do you know how much you made an
21 hour in 2009?

22 A I think \$45.

23 Q Why do you think \$45?

24 A Because I don't recall exactly
25 \$44, \$45.12, \$44.

1 P. Mendez

2 Q Is it fair to say that you do not
3 know exactly how much you were paid an hour for
4 any year that you worked for the defendants?

5 A Like I said, in the first year, we
6 started with one amount, then it was another
7 one.

8 Q Do you know the exact amount for
9 each year?

10 A No, I have to check.

11 Q What do you have to check?

12 A The stubs that he would give --
13 Louis Vecchia would give.

14 Q Do you have all of those stubs?

15 A I have many.

16 Q Did you turn them over to your
17 attorney?

18 A We gave him a lot of papers.

19 Q Did you give your attorney all of
20 your papers?

21 A I think so, many of them.

22 Q Not many, all?

23 A Not everything, because I was not
24 taking into account the previous years.

25 Q What previous years?

1 P. Mendez

2 A No. Like when I started working
3 the first years with him, sometimes those
4 papers, you know, you throw them away, you tear
5 them up.

6 Q Did you turn over to your
7 attorneys all of the documentation that you have
8 from the defendants?

9 A Yes, we handed them to them.

10 Q Who is the "we" that you're
11 referring to? Because I am only asking you the
12 question.

13 A What do you mean?

14 Q You say we turned them over. I am
15 only asking about you, not about anybody else.

16 A Well, I sent him the papers.

17 Q You sent who the papers?

18 A To our attorney.

19 Q And who is that attorney?

20 A Ian Wallace.

21 Q How much do you want to get paid
22 as a result of this lawsuit?

23 A The hours that they owe me.

24 Q How many hours do they owe you?

25 A I can't really give you a number.

1 P. Mendez

2 Q So you have no idea what you want
3 to get paid from this?

4 MR. WALLACE: Objection.

5 Q Correct?

6 A There are the hours that are in
7 the time sheet.

8 Q How many hours?

9 MR. WALLACE: Objection, asked and
10 answered.

11 A Okay, a simple -- if every day,
12 you -- the minimum that we had to work was ten
13 hours, if you just figure out the two hours, the
14 minimum in five days, how many hours is that?
15 How many are they in one month? How many are
16 there in nine months or eight months? That is
17 the minimum.

18 Q I'm asking you the question.

19 A No. That is why I can't really
20 say how many hours, because it's -- you said
21 before if it rains one day.

22 Q But you didn't work five days a
23 week, did you?

24 MR. WALLACE: Objection.

25 A In the summer and in good weather,

1 P. Mendez

2 when it didn't rain, yes. One year, I would
3 probably miss just one personal day sometimes;
4 only if it rained and there was no work when he
5 didn't call me.

6 Q On some days, you went directly to
7 the job site without going to the shop, correct?

8 MR. WALLACE: Objection, asked and
9 answered.

10 A What day?

11 Q I'm asking you.

12 A No. He would tell me to work, I
13 worked. If not, there was no work.

14 Q You need to listen to the question
15 that I ask you.

16 There were some days you didn't
17 report to the shop and you reported directly to
18 the job site, correct?

19 A Yes.

20 Q There were some days that you
21 worked less hours than you reported on the work
22 sheet as indicated on the GPS?

23 MR. WALLACE: Objection.

24 MR. ZABELL: Ian, that is your
25 last warning. You are not to speak

1 P. Mendez

2 during this deposition other than to say,
3 "I object to the form of the question."

4 MR. WALLACE: I said objection in
5 Spanish.

6 MR. ZABELL: If you object, you
7 object in English, that is the
8 appropriate thing to do.

9 (Whereupon, the requested
10 testimony was read back by the court
11 reporter.)

12 A What I put down was the order that
13 he gave us, and when I would leave work, that
14 was what I always reported.

15 Q And when you knew that you were
16 lying on your time sheet, you disabled the GPS?

17 MR. WALLACE: Objection.

18 Q Correct?

19 A No.

20 Q Why did you disable the GPS?

21 A Because of the same reason that I
22 said before, excuse me, the word -- that I was
23 angry, I was tired of them not paying overtime.

24 Q That is when you quit, correct?

25 A No, I did not quit.

1 P. Mendez

2 Q No, do you remember what you
3 testified to?

4 A No. He left me at home and they
5 no longer called me.

6 Q How many months out of a year did
7 you work for defendants?

8 A What is the question?

9 Q How many months a year did you
10 work for defendants?

11 A In 2005 or 2006, we would always
12 start -- like I said to him this morning when we
13 were talking downstairs, we would always start
14 March 1st or March 15th, then it would end
15 around December 24th.

16 And he would always close
17 two weeks, because the plant would close the
18 week of Christmas, and sometimes it was
19 one month or two months that I didn't work
20 because there was no work, three months, the
21 most. We would always start the 1st or 15th of
22 March.

23 Q You're sure of that?

24 A Most of the time, yes.

25 Q Most of the time, but not all of

1 P. Mendez

2 the time?

3 A Like I said, the 1st, 15th, that
4 was it. Now, I don't know, this year, I think
5 he started very late.

6 Q In the beginning of the season in
7 March, would you work full weeks?

8 A When we would start if there were
9 rain days, no.

10 Q At the end of the year, would you
11 work full weeks?

12 A Most of the time, yes, only from
13 November on, December. Because before Louis,
14 the boss, was very, very busy. Sometimes we
15 worked on Sundays.

16 Q What Sundays did you work?

17 A Many, but I can't recall.

18 Q You can't tell us any of them?

19 A Sometimes I worked at his house,
20 sometimes at a fire department. I have an
21 anecdote from when I worked in his house.

22 Q That is when this started, when
23 you worked in his house?

24 A Yes, his house, Sunday.

25 Q When you worked at his house, you

1 P. Mendez

2 got very jealous?

3 MR. WALLACE: Objection.

4 Q Correct?

5 A No, no.

6 Q Because you saw how he provided
7 for his family and you couldn't provide like
8 that for your family?

9 A It was a brick job that I was
10 doing. I had nothing to do -- his is his and
11 mine is mine.

12 Q Apparently not, because you want
13 to steal from him?

14 MR. WALLACE: Objection.

15 A I have respect.

16 Q You have no respect for his
17 equipment, you testified to that. Answer the
18 question.

19 A I have a respect for the machines.
20 I took care of it more than anyone else.

21 Q But you destroyed the GPS?

22 A No.

23 Q You testified before that you
24 didn't respect the GPS?

25 A I disconnected it, not to damage

1 P. Mendez

2 it.

3 Q Didn't you fight with the
4 installer who was sent to repair the GPS?

5 A Yes, I repeated that the last
6 time. First time I told him to tell Louis
7 Vecchia to check my overtime, not to check the
8 GPS.

9 Q If he says that you never said
10 that, that would make you a liar, wouldn't it,
11 sir?

12 A I said it, yes.

13 Q If we bring that person in and he
14 said that you didn't say that, would he be lying
15 or would you be lying?

16 MR. WALLACE: Objection.

17 A It's like a president and the
18 workers.

19 Q I don't see your hand on your
20 heart, your corazón.

21 A But I did it.

22 Q It's not, if you didn't disconnect
23 your GPS, we would be able to check your hours;
24 is that correct?

25 MR. WALLACE: Objection.

1 P. Mendez

2 A If that were true, and I wanted
3 you to bring the records because that record
4 shows the driver, what time the car is turned on
5 and what time the car is turned off at the
6 company.

7 I would like that record to exist,
8 because then you would know the time the pick-up
9 was turned on and off.

10 Q Did you ask the skinny gentleman
11 to your right for those documents?

12 A Who?

13 Q Him (indicating).

14 A No, I haven't asked that.

15 Q Ask him, go ahead, he has those
16 documents. They show you're lying.

17 MR. WALLACE: Objection.

18 Q Ask him.

19 THE WITNESS: What time does it
20 say that I turned the pick-up on?

21 MR. WALLACE: Objection.

22 MR. ZABELL: Did you show him the
23 GPS records?

24 MR. WALLACE: Just for the record,
25 yes, defendants have produced GPS

1 P. Mendez

2 records. They're scant, they're not
3 complete, and they don't show what
4 Mr. Zabell says they show.

5 The GPS records support
6 Mr. Mendez's testimony, if anything.

7 Q Listen, your job is to answer
8 questions, try to sit down like a big boy. You
9 cannot explain anything. All you can do is
10 answer questions.

11 A That's what I am doing.

12 Q Did you review any GPS records?

13 A No.

14 Q Do you know that they're available
15 for you to review?

16 MR. WALLACE: Objection, asked and
17 answered.

18 Q You can answer. Do you know that
19 they're available for you to review?

20 A Well, I have to --

21 MR. WALLACE: Do you want to show
22 the witness the GPS?

23 Q Do you know that tampering with
24 the GPS is a violation of the law?

25 MR. WALLACE: Objection.

1 P. Mendez

2 You can answer.

3 A I don't know that.

4 Q Did you know that the defendants
5 could have called the police on you because you
6 tampered with their equipment?

7 MR. WALLACE: Objection.

8 A So, I could have called them as
9 well as to -- because he didn't pay overtime.

10 Q You did call the police, they
11 investigated and they determined that you were a
12 liar.

13 MR. WALLACE: Objection.

14 A I never called the police.

15 Q Do you not recall testifying
16 earlier that you spoke with a detective?

17 A They called me, they made an
18 appointment with me. I don't know who. I do
19 know it was a detective from the union.

20 Q Do you know whether or not they
21 found if you were telling the truth?

22 MR. WALLACE: Objection.

23 A Same thing I am saying here, I
24 told them.

25 Q So you lied to them, too?

1 P. Mendez

2 MR. WALLACE: Objection.

3 A No, I don't think so.

4 Q Was there any other equipment of
5 the defendants that you tampered with?

6 MR. WALLACE: Objection.

7 A I didn't understand that word,
8 that I destroyed?

9 Q Tampered with.

10 A No.

11 Q Just the GPS?

12 MR. WALLACE: Objection.

13 A Yes.

14 Q You know the GPS was the only way
15 to make sure that you were where you said you
16 were?

17 MR. WALLACE: Objection.

18 A Yes.

19 Q Without those GPS records, you
20 have no proof that you were where you said you
21 were?

22 A I have about -- from three months,
23 the orders that he gave me that I collected,
24 where we went, when we started where we ended.

25 Q Where is that information now?

1 P. Mendez

2 A At home.

3 Q You didn't turn that over to your
4 attorney?

5 A Yes. For the hour that he would
6 tell us to get to the yard, the time that we
7 would finish the work, and I would write no cash
8 on the time sheet.

9 Q What company did you work for when
10 you filled that out?

11 A A corporation.

12 Q Suffolk Asphalt Corp?

13 A That one, yes.

14 Q You wrote "no cash" on those
15 sheets?

16 A Yes.

17 Q Is that because you were being
18 paid in cash?

19 A Like I said, he wanted to pay me,
20 but I said no.

21 Q So you never took cash?

22 A Yes, I took cash, but very few
23 times. That's what I said the last time I was
24 here.

25 Q No, you didn't say that.

1 P. Mendez

2 Do you remember testifying that
3 you never got paid in a check?

4 MR. WALLACE: Objection.

5 A No, I said I received both.

6 Q On a regular basis, you received
7 both, correct?

8 MR. WALLACE: Objection, you're
9 mischaracterizing testimony.

10 You can answer.

11 Q Do you remember testifying that on
12 a regular basis, you received both?

13 A Yes, like I said last time, yes.

14 Q Mr. Mendez, have you ever been
15 arrested?

16 MR. WALLACE: Objection.

17 A That I recall, not here.

18 Q Where have you been arrested?

19 MR. WALLACE: Objection.

20 A Not that I recall, I haven't been
21 arrested.

22 Q No, you said "not here."
23 Someplace else?

24 A Not arrested, it's --

25 Q What?

1 P. Mendez

2 A [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8 Q Who is the "us" you're referring
9 to?

10 MR. WALLACE: This is covered by
11 the protective order. You cannot ask him
12 anything about immigration status.

13 MR. ZABELL: I am not asking about
14 immigration status.

15 Q Were you alone when you were
16 called down into Hempstead?

17 A No. Those of us who worked, about
18 five, that is why I said "us."

19 Q Were you working for any of the
20 defendants at the time?

21 MR. WALLACE: Stop, stop.

22 A No.

23 MR. WALLACE: No more questions on
24 immigration.

25 MR. ZABELL: Ian, I have

1 P. Mendez

2 absolutely no interest in what you're
3 advising. Please understand that.

4 MR. WALLACE: I think this Court
5 does.

6 MR. ZABELL: What you think is of
7 little consequence to me.

8 MR. WALLACE: I have the Court
9 Order. Do you want me to read the Court
10 Order into the record?

11 MR. ZABELL: No, I have absolutely
12 no interest.

13 This individual was testifying to
14 me about when he got in trouble and when
15 he was called to Hempstead. He said that
16 he went in with other people that were
17 not working with my client. Therefore, I
18 have no interest in exploring it further.

19 You're confusing in how you
20 misguided this poor individual which is
21 not my concern.

22 MR. WALLACE: Objection to that.

23 MR. ZABELL: How you misguided
24 this not-so-poor individual.

25 MR. WALLACE: Objection to the

1 P. Mendez

2 word "misguided."

3 MR. ZABELL: Mislead? What do you
4 prefer?

5 MR. WALLACE: I have an objection
6 to anything that you're going to say
7 about my interaction with the witness.

8 Q What was your title when you
9 worked for defendants?

10 A Well, according to what he said, I
11 was in charge of the setup group.

12 Q Did you have a job title?

13 A No.

14 Q Were you an engineer?

15 A There, yes, when we went to the
16 union.

17 Q Before you went to the union, what
18 were you?

19 A The same, in charge of the setup
20 group.

21 Q Were you paid most of your wages?

22 MR. WALLACE: Objection.

23 A We were paid what it was with the
24 union, forty hours. And like I said, sometimes
25 they would pay a couple of overtimes, some

1 P. Mendez

2 overtimes, but not all of them.

3 Q So you were paid most of your
4 wages in 2009; is that correct?

5 MR. WALLACE: Objection.

6 A 2008, 2009, almost never.

7 Q Never what?

8 A They never paid us because they
9 would almost always pay us 40/40/40. But I
10 remember the amount on my check said \$1,051,
11 \$1,051, \$1,051.

12 Q Did you ever work seventy hours a
13 week?

14 A I worked them, but he never paid
15 them.

16 Q When did you work seventy hours a
17 week?

18 A Mostly, when it's summertime, when
19 it gets dark at 9:00.

20 Q When, what year?

21 A Most of the years, you could say
22 we had to work a minimum of fifty hours. After,
23 you have to stay an hour, two hours, after
24 ten -- the day was supposed to finish at 4:00,
25 we didn't finish until 6:00. It was about

1 P. Mendez

2 four hours of overtime, four, three hours like
3 that.

4 Q Please state for me the jobs that
5 you worked on when you worked overtime.

6 A It's difficult because I can't
7 explain this job and that job and that job. But
8 the boss, Louis, would say you have to finish
9 the work.

10 Q Life is difficult. Now please
11 explain the jobs that you worked at.

12 A It's difficult to remember where
13 you went the day before yesterday, last year,
14 two years ago.

15 Q Do you remember where you worked
16 the day before yesterday?

17 A At home, yes.

18 Q See? It's not so difficult.

19 A Yes, but you're talking about
20 three, four years ago.

21 Q You're suing, and in order to sue,
22 you're going to have to specify the place.

23 MR. WALLACE: Objection.

24 A Well, papers that I have, like you
25 said, I don't put my hand on heart, but now I am

1 P. Mendez

2 putting my hand on my heart.

3 And at 6:30 -- since 5:30 a.m. --
4 he accepted that I paid the money. He knows,
5 just like he accepted that I had paid him the
6 money. So just like I'm touching it now, he
7 knows that you would go.

8 MR. ZABELL: Did you accept that
9 he paid the money?

10 MR. VECCHIA: He would report to
11 the shop. He didn't have to come to the
12 shop. He could have reported to the job.

13 MR. ZABELL: Did you accept that
14 \$25,000?

15 THE WITNESS: Look in my eyes.

16 MR. VECCHIA: Look in your eyes?

17 THE WITNESS: You said it was just
18 the paper for the lawyer. That is what
19 you say this morning.

20 MR. VECCHIA: What do you mean?

21 THE WITNESS: The lawyers take
22 your money. I don't want to say nothing
23 about your lawyer. You asked me you
24 talked to your lawyer, I say no. When
25 you talked to him, I said, now I'm going

1 P. Mendez

2 to talk.

3 MR. VECCHIA: I have no problem.

4 THE WITNESS: You talked to him,
5 now I have to talk. The \$80,000 I going
6 to pay to the people over there. That is
7 when I was going to give it to you.

8 MR. VECCHIA: \$80,000. Instead,
9 we decided we're going to fight it.

10 THE WITNESS: I know in my heart I
11 pay you the money, you say yeah.

12 MR. VECCHIA: You didn't pay it
13 all, you made some payments, but you
14 didn't make it all.

15 You would go to the shop at 6:30,
16 and to Hempstead and not start to work
17 until 8:00, 8:30.

18 THE WITNESS: You send me to the
19 job, I go to the job. You know that is
20 why I want it to be clear. I paid that
21 money.

22 MR. ZABELL: He's a little bit
23 embarrassed and ashamed that he didn't
24 tell his wife.

25 THE WITNESS: It's like when I say

1 P. Mendez

2 to the people I haven't been to the job,
3 the job is -- my house is different.

4 MR. WALLACE: Can we have a little
5 bit of control over this deposition?

6 Q When you're caught in a lie, this
7 is how you act?

8 MR. WALLACE: Objection.

9 A This is not a lie. I tell him I
10 don't want to pay double when I paid, you know?
11 I explained to him, we make a deal, I'm going to
12 give you \$375 for every Saturday, you know?

13 MR. ZABELL: He's a little
14 embarrassed about the money.

15 MR. WALLACE: Objection to
16 Counsel's statement.

17 Q Did you ever get paid
18 time-and-a-half your regular rate of pay when
19 you worked for defendants?

20 MR. WALLACE: Objection, asked and
21 answered.

22 You can answer for about the tenth
23 time.

24 A Sometimes, very few.

25 Q Were you a foreman for defendants?

1 P. Mendez

2 A According to what he said, yes.

3 Q According to what you say, were
4 you a foreman?

5 A Yes.

6 Q Do you know foremen are supposed
7 to receive prevailing wage rates?

8 A Like I said, I don't know the laws
9 for each one.

10 Q You're suing under some of those
11 laws.

12 Do you understand that?

13 A Yes, I understand; maybe not
14 everything exactly, but yes.

15 Q Were you ever told that you were
16 fired from defendants' employment?

17 A Like I said, they never called me.
18 And I called Tommy and he said you have to speak
19 with the boss, whatever he says.

20 Q What telephone number did you give
21 them to call you back?

22 A I had about -- for fourteen,
23 fifteen years, I've had 220-2430. I never -- I
24 changed the phone, but not the number.

25 Q After working for Suffolk Paving,

1 P. Mendez

2 where did you start working?

3 A After I finished with him or
4 before?

5 Q After.

6 A After, a company that is called
7 Tristate.

8 Q When did you start working for
9 Tristate?

10 A I don't remember if it was in
11 March or April, I don't know, I don't remember
12 the day.

13 Q What were you doing for Tristate?

14 A Same job that I would do at Louis'
15 company.

16 Q Did they pay you union rates?

17 A Yes.

18 Q Did you report your hours to the
19 union?

20 A No.

21 Q Why?

22 A Because the company doesn't have a
23 union.

24 Q Did you work on prevailing wage
25 rate jobs?

1 P. Mendez

2 A Yes, not much, but yes.

3 Q Were you paid prevailing wage
4 rates?

5 A Yes.

6 Q Were you paid prevailing wage
7 supplements?

8 A That, I don't know. What is that?

9 Q You don't know what prevailing
10 wage supplements are?

11 A The word "supplements."

12 Q Approximately, how many hours do
13 you think you worked in a year?

14 MR. WALLACE: Objection.

15 Q You can answer.

16 A I can't really say because
17 sometimes it might rain, I don't know.

18 Q Can you estimate for us?

19 A I can do the same thing that I was
20 starting to do awhile ago, according to how many
21 days I worked, how many hours when he stopped --
22 when he said that he -- you said -- that was not
23 the question that you were asking.

24 Q So can you estimate for me how
25 many hours a week you worked?

1 P. Mendez

2 A I said I never thought about that.
3 What I count is the months that I work, that is
4 what I count.

5 Q As you're sitting here today,
6 there is no way for you to estimate for us how
7 many hours a week you worked for defendants?

8 MR. WALLACE: Objection.

9 Q You can answer.

10 A I can give you an estimate.

11 Q Go ahead.

12 A But I have to see what days I
13 worked.

14 Q Stop talking about it and tell us.

15 A I can't, I can't.

16 Q Didn't you just say that you can
17 give us an estimate?

18 A Yes. I was starting to explain.

19 Q Why did you lie and say you can
20 give us an estimate when you can't give us an
21 estimate?

22 A Because I was telling you I could
23 give it to you, but if you give me time to say
24 how many weeks I worked in a month.

25 Q Did you work for more than a

1 P. Mendez

2 thousand hours in a year?

3 MR. WALLACE: Objection.

4 A I think so, yes, because when I
5 started the union, I had to work a thousand
6 hours to get benefits.

7 Q That was in what year?

8 A Most of the years that I was in
9 the union. Like I said, I can't say if I worked
10 two thousand hours, one thousand, but when the
11 years were good and everything -- if it rained,
12 we didn't work. But after that, you had to
13 work.

14 Q You never kept track of rain days?

15 A No.

16 Q Did you stop working for
17 defendants before or after the lawsuit was
18 filed?

19 A Well, we filed the lawsuit, we
20 spoke with the attorneys before, but Louis
21 Vecchia knew that I was asking for a lot. So in
22 November, they left me at home and told me they
23 were going to call me the following day. I
24 called Tommy on Monday and what he said, that I
25 had to call the boss, Louis.

1 P. Mendez

2 Q That's a great story, but it
3 doesn't answer my question.

4 A What can I say; yes or no?

5 Q Yes.

6 A It's --

7 Q Were you dropped off at home
8 before or after you filed the lawsuit?

9 MR. WALLACE: Objection.

10 A Like I said, I don't know if it
11 was before or after. But we gave them the
12 papers for the suit before, and we complaining a
13 lot to Tommy, that is what happened, they
14 dropped me off at home.

15 Q Who gave you the papers?

16 A I gave him mine.

17 Q And by "papers," you mean a copy
18 of the lawsuit?

19 MR. WALLACE: Objection.

20 A No papers, the copies of papers
21 that I kept together over a three-month period
22 saying the time we started, the time that we
23 ended, and where we went.

24 Q Do you know when the lawsuit was
25 filed?

1 P. Mendez

2 A I read it, but I don't. I think
3 it was in December, something around there, I
4 don't know the exact date.

5 Q So two months after, you stopped
6 working, correct?

7 MR. WALLACE: Objection.

8 A No, it's November, isn't it? He
9 had the papers to them before and according to
10 them, they fired me because I was complaining a
11 lot about the overtime.

12 Q Did anybody ever complain about
13 you to the defendants that you had a bad
14 attitude?

15 A Never. Only -- he one time asked
16 me what was happening to me, and I said that
17 what was happening was that I was not getting my
18 overtime in my check. My boss, Louis, only said
19 that to me once.

20 Q When did he say that?

21 A I'm not sure, but I think it was
22 in about October, September or October, around
23 there. But I'm not sure of the date.

24 Q Do you ever think that you had a
25 bad attitude at work?

1 P. Mendez

2 A No. I always -- like I said
3 before, if I have a problem at home, I would
4 leave it at home, not at work.

5 Q Do you think it's okay to destroy
6 company property?

7 MR. WALLACE: Objection.

8 A That has never been -- I never
9 tried to destroy something that is not mine.

10 Q Did you own the GPS?

11 A No.

12 Q But that is something that you did
13 try to destroy?

14 MR. WALLACE: Objection.

15 A No, it was the same thing, because
16 of the overtime.

17 Q Everything is because of the
18 overtime?

19 A Yes, that is the reason we're
20 here.

21 Q Who told you to say that?

22 A No, it's me.

23 Q You destroyed the GPS because of
24 the overtime?

25 MR. WALLACE: Objection.

1 P. Mendez

2 A I didn't destroy it. It was -- I
3 was angry, because, like I said before to you,
4 they were checking the vehicle and where the
5 people were, but they were not concerned with
6 paying people's overtime.

7 Q That is why you destroyed it three
8 times?

9 MR. WALLACE: Objection.

10 A I wouldn't destroy it, I would
11 disconnect the fuse.

12 Q How many times?

13 A Two or three, I can't really say.

14 Q When was the first time you
15 disconnected the GPS?

16 A I don't recall.

17 Q When was the second time that you
18 disconnected the GPS?

19 A I don't recall.

20 Q Do you recall the third time you
21 disconnected the GPS?

22 A No.

23 Q Were you getting paid overtime
24 before you stole the \$25,000 loan from
25 Mr. Vecchia?

1 P. Mendez

2 MR. WALLACE: Objection.

3 A Like I said at the beginning, yes;
4 most of the time, no.

5 Q When did you ask for the \$25,000
6 from Mr. Vecchia?

7 A Before, I think it was 2005. I
8 have the date, but I don't remember, because I
9 was going to buy a house, but I didn't have
10 credit, because I never had a credit card. You
11 have to have some money or someone who had a
12 good record.

13 Q Did Mr. Vecchia charge you
14 interest?

15 A That was not the -- when we spoke,
16 he didn't say anything about that. Something
17 else?

18 Q Si.

19 A You want me to continue with the
20 question that you asked?

21 Q You provided an answer, unless you
22 have more to add to it.

23 A No, because like I said -- and I
24 said last time when he lent me that money, I
25 said I was going to pay him on Saturdays. He

1 P. Mendez

2 gave me the papers to sign and to take to Donna,
3 who was the notary. I went to his office, and I
4 asked him what that paper meant.

5 What he said was that -- don't
6 worry, these are only papers from my accountant,
7 because I can't give \$25,000 just for the sake
8 of giving it. I have to see where I am going to
9 put them or where it's going.

10 Then I said, this does not have
11 anything to do with what's here. And he said,
12 no, don't worry. That is what I can say
13 relating to the \$25,000.

14 Q How much did you make a year
15 working for defendants?

16 A It all depends.

17 Q Roughly, how much did you make a
18 year?

19 A \$60,000, \$65,000, it changes each
20 year.

21 Q You were out of work for how long?

22 MR. WALLACE: Objection.

23 A What do you mean?

24 Q How long were you out of work
25 after you left Suffolk Paving?

1 P. Mendez

2 A Well, you can say from November
3 to -- like I said, I don't remember the exact
4 date, it could be March or April.

5 Q You would have been out of work
6 during that time, as well, even if you stayed
7 with defendants?

8 A What did you say?

9 Q You would have been out of work
10 during that period of time, even if you had
11 continued to work with Suffolk Asphalt?

12 A Well, when I worked with the boss,
13 Louis, work that I did, he called me first,
14 because I was the setup and after me were the
15 paving crew. It was normal that I worked first.

16 Q You would have been called in
17 April or May of the next year, correct?

18 A I think so.

19 Q You got another job working in
20 April or May of the next year, correct?

21 A Yes. Because everybody was
22 working in November and December and I was home.
23 I would call Tommy and I would ask if there was
24 work for me. He would say call the boss. I
25 don't know, that's what he said all the time.

1 P. Mendez

2 Q Did you call?

3 A No.

4 Q So Tommy told you to call
5 Mr. Vecchia, but you refused to call him, right?

6 MR. WALLACE: Objection.

7 A No. Because he said that there
8 was no work, and he was going to make the
9 decision.

10 Q You never called Mr. Vecchia?

11 A No.

12 Q Even though Tommy told you to call
13 him?

14 A He said if you have anything to
15 ask, call the boss. What he said was, when we
16 were asking, he said, check my computer,
17 everything is in my computer. The other boss
18 Dominick that we had, we would ask for overtime.

19 Dominick, the boss, would say my
20 pen is all blue, the boss's is all red.
21 Whatever you see -- the overtime that I put
22 down, I put it down, but the boss makes the
23 decision.

24 Q So in November, Tommy told you to
25 call Louis Vecchia to see about working and you

1 P. Mendez

2 never called; is that correct?

3 A Yes.

4 Q Do you know if you called Louis
5 Vecchia whether or not he would have found work
6 for you?

7 A No. Because after they said that,
8 there was already someone else doing a job that
9 I had done.

10 Q But you never knew that because
11 you never called Mr. Vecchia, correct?

12 MR. WALLACE: Objection.

13 A I don't know.

14 Q Are you saying that when you went
15 over your time sheets with Tommy, Tommy's time
16 sheets were accurate?

17 MR. WALLACE: Objection.

18 A He was saying the hours that we
19 gave him, he put in the computer. What Dominick
20 said was that he would put it in the computer
21 and the time sheets with the blue pen, and the
22 boss would only use a red pen, that it wasn't
23 their problem, the problem was that he decided
24 what was to be paid.

25 Q What about Tommy's time sheets,

1 P. Mendez

2 were they accurate?

3 MR. WALLACE: Objection.

4 A No. We would give him a paper.
5 He would put it in the computer, and I wouldn't
6 know if he put them in or not.

7 Q You have no idea?

8 MR. WALLACE: Objection.

9 Q You can answer.

10 A No, I don't know if he put it in
11 or not. The computer wasn't available to us.

12 Q How much money did you lose as a
13 result of ending your employment relationship
14 with the defendants?

15 A How much money in what?

16 Q Did you lose as a result of ending
17 your employment relationship with Suffolk
18 Asphalt or defendants?

19 A I can't really say, I don't know.

20 Q A lot, a little?

21 MR. WALLACE: Objection.

22 A No, I don't know, could be a
23 little, could be a lot.

24 Q Try and figure it out, try to use
25 your head.

1 P. Mendez

2 A I don't know. Like I said, I'm
3 not going to be home a long time. I called once
4 and the boss has to call me, and if they don't
5 call me, I have to look for a way to survive.

6 Q How much did you lose? You're
7 suing for it, so you have to be able to say it.

8 MR. WALLACE: Objection.

9 A I don't know.

10 Q Did you lose one month's worth of
11 work?

12 A I think maybe about two.

13 Q Maybe two?

14 A Around there, yes.

15 Q Do you know how much money that
16 is?

17 A If you calculate -- if I worked
18 ten -- fifteen hours, like that. Just for that,
19 not counting overtime.

20 Q You have no idea, right? And you
21 have no ability to calculate it?

22 MR. WALLACE: Objection.

23 Q Answer the question.

24 A My boss, Louis -- no.

25 Q A lawsuit was filed against you,

1 P. Mendez

2 was it not?

3 A Yes.

4 Q That lawsuit is for money that was
5 lent to you?

6 A Yes.

7 Q That is for money that you
8 actually took from defendant, correct?

9 MR. WALLACE: Objection.

10 A Yes.

11 Q That's the money that you utilized
12 to purchase your home?

13 A Yes, but I paid him.

14 Q That is the home that you share
15 with your wife and your children?

16 A Yes.

17 Q And without that money that you
18 borrowed from defendants, you would not have
19 been able to afford that, correct?

20 A No. Because there are other
21 people one can ask, not for \$25,000, but maybe
22 \$10,000. If he closed the doors on me, I
23 wouldn't have been able to do it. I had to do
24 it one way or another.

25 Q But he didn't close the doors on

1 P. Mendez

2 you?

3 A Yes.

4 Q This is how you repay him?

5 MR. WALLACE: Objection.

6 A That has nothing to do -- the
7 favors have nothing to do -- if he wants to
8 continue the friendship, this has -- since he
9 said that to me downstairs, it's only paper, if
10 you want to return to work, you can return to
11 work.

12 Q What favors did you do for him?

13 A Well, he would call me, I would be
14 there. Sometimes on Saturdays, he would call
15 me, can you take care of the diesel for
16 such-and-such a place where there are other
17 people working, and I would say yes.

18 And I remember if I missed an hour
19 or hour-and-a-half, I wouldn't write that down.

20 Q Any favor that you did for him, he
21 paid you for?

22 MR. WALLACE: Objection.

23 A If you're poor, it's difficult for
24 you to do a favor for a president or a boss.
25 Sometimes you pay him with favors by working or

1 P. Mendez

2 stays late if he asks you. What other favor can
3 I give him; lend him a million dollars, lend him
4 a car? I can't, he has a better car.

5 Q How about being honest and loyal?

6 MR. WALLACE: Objection.

7 A I am doing that.

8 Q How much have you incurred in
9 legal fees as a result of Mr. Vecchia suing you
10 for a return of the \$25,000 that he lent you?

11 MR. WALLACE: Objection, asked and
12 answered.

13 A How much have I spent on what?

14 Q Legal fees.

15 A About what? I don't understand
16 the question.

17 Q How much money have you spent in
18 legal fees to defend yourself?

19 A Nothing. The \$500 I gave him for
20 him to respond to the lawsuit.

21 Q I'm going to show you a document
22 previously identified as Exhibit 5.

23 A This --

24 Q There is no question pending
25 before you. Look at the document.

1 P. Mendez

2 A He never gave us this paper. I
3 think this is for the drivers, because every
4 time when they would do seventy-five miles an
5 hour, they would say that Helene would call
6 them, yes.

7 Q How often would you go into the
8 office in the shop?

9 A What are you referring to?

10 Q You said you would go to the shop
11 every day; do you remember?

12 A Yes.

13 Q You would be there for five to
14 ten minutes every day?

15 A Yes, always.

16 MR. WALLACE: Objection.

17 A That was the longest that I was
18 there. I would grab my paper and leave.

19 Q You would go inside the shop,
20 correct?

21 A Yes.

22 Q Was there ever a billboard inside
23 the shop?

24 A You would always see something
25 when they had to tell us something. I never

1 P. Mendez

2 really paid attention to what they said, when
3 they would put that there.

4 Q So there was a billboard, but you
5 never really paid attention to what was on it,
6 correct?

7 A Yes. Only one time when they told
8 us that they were not giving us checks, they
9 made us sign ten pages, and they said if we
10 didn't sign those ten pages, they wouldn't give
11 us a check.

12 Q And you signed those pages?

13 A Yes.

14 Q And the pages said that you knew
15 what the prevailing wage rate was and that you
16 received it?

17 A No, I don't know what those pages
18 said.

19 Q Don't you think you should have
20 figured that out before you signed that?

21 A No. Because if they said you had
22 to sign this, if not, you don't have work, there
23 is no check, what can one could do?

24 Q One could understand what it is
25 before they sign it.

1 P. Mendez

2 A Yes. But sometimes I trust the
3 person or the person's word. But from now on,
4 now I have to know what I am going to sign and
5 what I am going to do. Sometimes you trust the
6 words of the person.

7 Q But now you don't trust them,
8 right?

9 A Now, I have to know you who can
10 trust, but not like before.

11 Q How long before the complaint was
12 filed in this litigation before you were
13 terminated from defendants?

14 A I don't know.

15 MR. WALLACE: Objection.

16 A Four or five or six months.

17 Q Are you saying that you were fired
18 four or five or six months after the complaint
19 was filed or before?

20 A No. I'm saying that I started to
21 complain about the overtime.

22 Q I didn't ask you about that. I
23 asked you about when the complaint was filed in
24 Federal Court.

25 A I think it was one week after or a

1 P. Mendez

2 few, I don't know how many.

3 Q You think you were fired a week
4 after or a few weeks after the complaint was
5 filed?

6 A I think it was about three.

7 Q You think you got fired
8 three weeks after?

9 A I'm not sure.

10 Q Were you fired before or after the
11 complaint was filed?

12 MR. WALLACE: Objection.

13 You can answer for the tenth time.

14 MR. ZABELL: Ian, zip it, please.

15 A What I know is that they fired me
16 because of the complaints that I was making.

17 Q Was that before or after the
18 lawsuit was filed?

19 MR. WALLACE: Objection.

20 A You can say that it was around the
21 same time.

22 Q Around the same time?

23 A Around there, yes.

24 Q You're sure of that?

25 A It's just that I can't really say

1 P. Mendez

2 yes, one week, two weeks, three weeks. I know
3 that everybody was working and I was home.
4 That's what I can say.

5 Q When was the last time you spoke
6 to Maynor Fajardo?

7 A When was it? About three or
8 four days ago.

9 Q Whose idea was it to go speak to
10 the attorneys in this case?

11 A Everyone.

12 Q Who was the ringleader?

13 MR. WALLACE: Objection.

14 A There is no leader here. Like I
15 told the boss, Louis, downstairs, when he made
16 me the offer, I said, it's not me, it's
17 everyone. I told the boss, it's not Renato,
18 it's not Victor, it's all of us.

19 Q Do you think everybody should
20 share in this lawsuit equally?

21 A Well, I don't know. I think that
22 what we're fighting is the overtime, and to
23 answer the questions that you're asking.

24 Q But you have no idea how much you
25 think you're entitled to in overtime?

1 P. Mendez

2 MR. WALLACE: Objection.

3 A I said I can make an estimate.

4 Q Go ahead.

5 A I worked nine months, so if you
6 like -- I was saying at the beginning, if I
7 worked forty or sixty hours in one week, how
8 much is it in one month? How much is it in
9 eight months?

10 Q Tell us.

11 MR. WALLACE: Objection, asked and
12 answered. He's not going to give you a
13 number.

14 A I can't say it's ten hours in
15 one year. I'm not sure, I don't know.

16 Q Is that what it is, ten hours in
17 one year?

18 A No, that's an example that I'm
19 giving.

20 Q Give us a number. You're suing,
21 this is your lawsuit.

22 MR. WALLACE: Objection.

23 Q Give us a number.

24 MR. WALLACE: Objection.

25 A I can't give you a number.

1 P. Mendez

2 Q You can't figure out anything you
3 believe you're entitled to, can you?

4 MR. WALLACE: Objection.

5 A Okay, just one little question. I
6 turned off by phone before. No, okay, I worked
7 twelve hours in one day.

8 Q What day did you work
9 twelve hours?

10 A That's what I can say, because I
11 can't specify a day.

12 Q So you have no idea what days you
13 worked, what jobs you worked?

14 A One little question. The boss,
15 Louis, he's number one in numbers. Let him tell
16 me fifteen days ago where he worked and how many
17 hours he worked. Just two weeks ago, not five
18 years ago.

19 Where did he work, how many hours
20 did he work? Since he's an expert, let's see if
21 he remembers where he worked. It drives one
22 crazy.

23 MR. VECCHIA: I work 24/7.

24 MR. WALLACE: I want a restroom
25 break. I don't care how many times you

1 P. Mendez

2 ask him, he's not going to give you a
3 number.

4 (Whereupon, a recess was taken
5 from 3:39 p.m. to 3:47 p.m.)

6 Q Mr. Mendez, do you know if there
7 is any difference between Suffolk Asphalt and
8 Suffolk Paving?

9 A What I know and what I understand
10 is that it's the same owner -- that question I
11 asked him when we got to the union, when we
12 started in the union, and he said that it was
13 only his name to cover, but it was under his
14 leadership.

15 Q Did you ever work for any entities
16 other than Suffolk Asphalt or Suffolk Paving?

17 A What was the question?

18 Q When you worked for the
19 defendants, did you ever work for any companies
20 other than Suffolk Asphalt or Suffolk Paving?

21 A I said not that I recall, those
22 are the two companies. And I said before, there
23 was a company that he sent me to work and they
24 give me a check and he gave me the rest. It was
25 always Suffolk Asphalt and Suffolk Paving.

1 P. Mendez

2 Q Do you know who the owner of
3 Suffolk Asphalt is?

4 A Louis Vecchia.

5 Q Do you know who the owner of
6 Suffolk Paving is?

7 A Louis Vecchia.

8 Q That is it, that is all you
9 understand the owners to be?

10 A Yes. But who runs the company is
11 him, Helene, his son works like as a worker like
12 we do.

13 Q So his son is a worker, correct?

14 A That is what he told us many
15 times.

16 Q His son is not an owner of a
17 company?

18 MR. WALLACE: Objection, asked and
19 answered.

20 A He has the name of the company, he
21 would sign the check, it was just a stamp that
22 they used.

23 Q Did you ever get paid double time?

24 A Sometimes.

25 Q You never mentioned that before.

1 P. Mendez

2 MR. WALLACE: Objection.

3 Q Why is that?

4 A You haven't asked me. I haven't
5 mentioned it.

6 Q Is there anything else that I
7 didn't ask you that you want to mention?

8 A I don't know what you're going to
9 ask me.

10 Q Do you remember any of the names
11 of the projects you worked on?

12 MR. WALLACE: Objection, asked and
13 answered.

14 A It's difficult because every day,
15 you pretty much go somewhere different and
16 sometimes he has other companies that do work
17 for him or give him the work, and sometimes you
18 think that work is the other person's, but he is
19 the one that's in charge.

20 Q Did you ever sign in on specific
21 jobs?

22 A I remember the last one that we
23 signed here on 112 -- no, I am mistaken here on
24 Carleton Avenue at a school, that was there.
25 There they came and they asked us to sign some

1 P. Mendez

2 papers.

3 Q And you would sign in the actual
4 time that you went in to work; is that correct?

5 A No, that page was separate. I
6 don't know what that was about. We just had to
7 sign.

8 Yes -- oh, and that day, I
9 remember that one of the bosses called Louis,
10 the boss called and told him that we weren't
11 doing anything, and I had almost finished a
12 whole truckload of asphalt, I almost finished
13 it.

14 So he believed the other person in
15 charge, and I had said, first check before
16 bringing it to my attention.

17 Q Do you ever play football on the
18 job site?

19 A We have to play -- no -- sometimes
20 would have a ball, maybe two minutes or
21 one minute.

22 Q So you would pull out the ball and
23 only play for one or two minutes?

24 A Because the boss, Louis, knows
25 that sometimes in a job, that he orders --

1 P. Mendez

2 sometimes there are five trucks that take the
3 material. Sometimes you have to wait
4 five minutes, ten minutes for truck, it's like a
5 lunch hour.

6 They would never give us lunch.
7 Only when it was short time, we would take five
8 minutes to eat and work and that's it.

9 Q So you would take five minutes to
10 eat, work and then play soccer?

11 A No. About playing -- it maybe
12 happened once or twice, but not every day. Do
13 you understand?

14 Q Did you ever start a job at 8:30
15 in the morning?

16 A I think maybe in one year, maybe
17 once or twice a year, if I am not mistaken.

18 Q Do you remember any of the jobs
19 you started at 8:30 in the morning?

20 A No.

21 Q I'm going to show you a document
22 that has been previously marked as Plaintiffs'
23 Exhibit 8.

24 A This paper is not mine.

25 Q I'm not asking you anything yet.

1 P. Mendez

2 MR. WALLACE: Wait for the
3 question.

4 MR. ZABELL: Why don't we mark
5 this as Defendants' Exhibit 5.

6 (Town of Babylon contractor daily
7 employee attendance sheet was marked as
8 Defendants' Exhibit 5 for identification,
9 as of this date.)

10 Q Do you know what that document is?

11 A I think it's Town's.

12 Q Town of Babylon, right?

13 A Yes.

14 Q It is the Town of Babylon
15 contractor daily employee attendance sheet; is
16 that correct?

17 A I think so. I have never saw that
18 before.

19 Q Do you see your name anywhere on
20 that document?

21 A No.

22 Q I'm going to ask that you turn the
23 page.

24 Do you see your name anywhere on
25 the third page?

1 P. Mendez

2 A Yes.

3 Q Does that show you starting your
4 day at 8:30 and ending your day at 4:30?

5 A Yes.

6 Q Is it fair to say that day you
7 worked from 8:30 to 4:30?

8 A Yes.

9 But who made this paper?

10 Q I'm going to ask you to turn the
11 page.

12 Do you see your name on that at
13 all?

14 A In the front.

15 Q Turn the page, no. Bates stamp
16 number 1247.

17 A Yes.

18 Q Does that show that you worked
19 from 8:30 to 3:00 on that day; yes or no?

20 A I didn't fill this in. Is this
21 paperwork from the Town or the boss?

22 Q Do you see that it shows that you
23 worked from 8:30 to 3:00 on July 9th?

24 A Yes, but we --

25 Q Did you work from 8:30 to 3:00 on

1 P. Mendez

2 July 9th?

3 A I never got to work at 8:30. It
4 was about two or three times. We go to the
5 yard, we went to the yard, then we went to work.
6 This past year is when he started to send
7 everyone to the jobs at the same time. Like I
8 said, 8:00, 8:30, but before everyone went to
9 the yard.

10 Q You understand that your lawyers
11 gave us these documents?

12 A Okay --

13 Q So your lawyer give us a document
14 that is not accurate?

15 MR. WALLACE: Objection.

16 A No. What I am saying is that my
17 time sheet, I would always fill it in and give
18 it to them. I've never seen this document. I
19 have never seen this document before.

20 Q So is this document accurate?

21 MR. WALLACE: Objection.

22 Q Yes or no?

23 A Yes, but they're not the hours
24 that we had worked.

25 Q So you didn't work 8:30 to 3:00

1 P. Mendez

2 on July 9th?

3 A Like I said, a year or two or
4 three times, we started at eight. Most of the
5 time 7:00, 7:30.

6 Q Do you know if a representative
7 from the Town of Babylon is going to swear to
8 this document?

9 MR. WALLACE: Objection.

10 A This is better for him because
11 this shows the eight hours, not the hours that
12 we worked.

13 Q I'm going to ask you to turn the
14 page one more page.

15 Do you see your name anywhere
16 there?

17 A Yes.

18 Q It shows that you started at 8:30
19 again, right?

20 A Yes.

21 Q It shows that you worked until
22 6:00, correct?

23 A Yes.

24 Q You worked a total of nine hours,
25 correct?

1 P. Mendez

2 A That's what it says here. Who
3 signed this paper? Because I am not the person
4 in charge.

5 MR. VECCHIA: Those are the hours
6 you worked. Stop now.

7 Q A Town of Babylon representative
8 signed this.

9 MR. VECCHIA: Who watched us.

10 Q Here, it says you worked nine
11 hours.

12 Did you not work nine hours that
13 day?

14 A No. It's that they never sent us
15 straight to the job site.

16 Q Did you work more or less?

17 A More.

18 Q How many more or less?

19 A If we start, put down 6:30 up to
20 9:00.

21 Q Did you know that they don't open
22 up the job until 8:30? Did you know that?

23 A Maybe the Town doesn't allow him
24 to, but the trucks and the companies, they have
25 to be in the yard at 6:30. Even though if they

1 P. Mendez

2 told him that the job started at 11:00, they
3 would still tell us that we have to be there at
4 6:30 or 7:00.

5 Q You were at the Town of Babylon
6 job?

7 MR. WALLACE: Objection.

8 A I would get to the yard, then if
9 he said he had to be there at 8:30 -- because
10 the majority of the papers that I have are from
11 Babylon. I can bring you almost three months'
12 that it says 6:30 and the time we finished.
13 These are the papers from the Town.

14 Q You didn't finish the job from the
15 day before? You said when you don't finish the
16 job, you go to the job the next day.

17 Were you lying before or are you
18 lying now?

19 A No. If he doesn't finish -- this
20 is not a job from one street or one parking lot.
21 This job would be one patch here, one patch
22 there.

23 Q How long does it take you to get
24 from the shop to Babylon?

25 A It all depends; thirty minutes,

1 P. Mendez

2 forty minutes.

3 Q Did it take you two hours?

4 A I don't think so.

5 Q Me neither.

6 A If he says to be at the yard and
7 if there's trouble where the truck breaks down,
8 if he says 6:30, we have to be there.

9 One time he got angry at the
10 inspector around here on Horseblock. He got
11 angry because the inspector wouldn't allow us --
12 we started that day at 6:30, and the inspector
13 checked the temperature of the ground and said
14 it was not hot enough. He was very angry. I
15 said to him, speak to me slowly and clearly, I
16 can understand. But the inspector didn't allow
17 us to work until 9:00 a.m., but we start at
18 6:30.

19 Q Turn to the very next page.

20 You see your name on that page?

21 A Yes.

22 Q What time does it show you coming
23 to the job that day?

24 A From 8:30 to 5:00.

25 Q Did you work from 8:30 to

1 P. Mendez

2 5:00 that day?

3 A I'm sure that I started at 6:30.

4 Q Was it too hot to do asphalt on
5 that day?

6 A It's difficult to say if it was
7 hot or cold.

8 Q How cold does it usually get in
9 the month of August here in America?

10 A Here, it's not cold. You know,
11 it's hot. But I told you that the inspector
12 didn't allow us to work. It was at a different
13 job.

14 Q You were telling me about
15 something completely irrelevant to the document?

16 A To explain the problems that he
17 could have, we have to be at the yard at 6:30.

18 Q But here, the document shows you
19 working from 8:30 to 5:00 on August 10th; is
20 that correct?

21 MR. WALLACE: Objection.

22 A Here, yes.

23 Q I'm going to ask you to turn the
24 page.

25 Do you see your name there?

1 P. Mendez

2 A Yes.

3 Q Does that show you working at 8:00
4 that day?

5 A Yes.

6 Q Does it show you leaving at 4:00
7 that day?

8 A No -- yes.

9 Q So the answer to my question is
10 yes?

11 A Yes. But we have never been -- I
12 repeat, for one month or any time going to work,
13 what we did was go to the yard.

14 Q Do you have any family members
15 that work for the defendants, other than your
16 brother?

17 A No, only him.

18 MR. ZABELL: Let's take a break.

19 (Whereupon, a recess was taken
20 from 4:09 p.m. to 4:30 p.m.)

21 Q Mr. Mendez, were you required by
22 the defendants to fill out daily time sheets?

23 A Yes, they required it.

24 Q Did they give you a time sheet to
25 fill out?

1 P. Mendez

2 A At the beginning, yes. Then, they
3 would put them on a desk for us to take.

4 Q Did those time sheets match the
5 time sheets that Tommy would put into the
6 computer?

7 MR. WALLACE: Objection, asked and
8 answered.

9 A Like I said, we gave them to him,
10 then we waited for the check. If the check was
11 not correct, they we would go to Tommy and let
12 him know that the hours were not complete.

13 Q Were these time sheets, were they
14 daily time sheets?

15 A No. They were ones that said from
16 Monday through Sunday.

17 Q All of them said Monday through
18 Sunday?

19 A Yes, they all said it. We would
20 fill it out, the week was from Wednesday -- I
21 don't know if it was from Tuesday to Wednesday;
22 the week ended on Wednesday.

23 Q Do you know what kind of
24 deductions were made from your paycheck?

25 MR. WALLACE: Objection, asked and

1 P. Mendez

2 answered.

3 A That they would take out -- I
4 didn't I really pay much attention to that.

5 Q You never paid much attention to
6 your paycheck?

7 A What I would see is my hours and
8 how much, what they gave me.

9 Q Do you know how much cash you
10 received in total from defendants?

11 A No.

12 Q Do you ever report the amount of
13 cash you received on your income tax returns?

14 A No.

15 MR. WALLACE: I'm going to mark
16 that portion confidential.

17 MR. ZABELL: I'll object to that.

18 Q Do you know if any of your
19 co-workers received cash?

20 A The truth is that like when they
21 asked me what I earned, I never said what I
22 earned. So I can't say yes or no, I don't know.

23 Q You don't know if any of your
24 co-workers received cash payments?

25 A Sometimes Renato would say that

1 P. Mendez

2 they gave him and sometimes not.

3 Q But nobody else would say that
4 they got cash payments?

5 A No one is really -- no one really
6 pays much attention to what you earn about
7 checks and money, what they gave you.

8 Q You all paid attention at some
9 point, didn't you?

10 A What I was concerned with is how
11 much I was taking home for me.

12 Q If you were paid in cash and no
13 taxes were taken out, you would be happier,
14 correct?

15 MR. WALLACE: Objection.

16 A No, because I hardly ever wanted
17 cash.

18 Q Why?

19 A Because what I told the boss,
20 Louis, in the morning, he told me to work for a
21 friend of his and he said that he was going to
22 pay me in cash, and I said I didn't like to get
23 paid in cash because I would have problems.

24 Louis told his friend, whose name
25 is Billy, offered him \$200 if you want or if

1 P. Mendez

2 not, whatever he wants.

3 Q Did you do work for Billy?

4 A Some days that the boss paid me.

5 Q So you would work for Billy, but
6 Louis would pay you?

7 A Yes.

8 Q What was the name of Billy's
9 company?

10 A No, Billy doesn't have a company,
11 it's his house, it's his house.

12 Q You did work for him at his house?

13 A Yes.

14 (Pictures of GPS were marked as
15 Defendants' Exhibit 6 for identification,
16 as of this date.)

17 Q I'm going to show you a document
18 that is called Defendants' Exhibit 6. It's also
19 been marked as Plaintiffs' 48.

20 Have you ever seen that document
21 before?

22 A Not that I recall.

23 Q Take a look at the pictures.

24 A It's difficult to see what it
25 means.

1 P. Mendez

2 Q Does that look like the GPS unit
3 that you tampered with?

4 MR. WALLACE: Objection.

5 A I can't really say, you can't
6 distinguish what it is. I can't tell what it
7 is.

8 MR. WALLACE: Can we get copies of
9 the marked exhibits?

10 Q Mr. Mendez, do you know what your
11 overtime rate is?

12 MR. WALLACE: Objection, asked and
13 answered.

14 A Overtime was \$90-something. Once
15 I spoke with the people from the union, they
16 said that it was \$98, plus \$25 for benefits.

17 Q That's overtime or double time?

18 A That's the overtime.

19 Q How much is your hourly rate?

20 A \$44, \$45, and overtime hours were
21 time-and-a-half. People from the union said
22 that when you got an hour of overtime, you got
23 \$25 of benefits.

24 Q So, do you believe that
25 one-and-a-half times of \$47 is \$90 dollars?

1 P. Mendez

2 A No. But I know that's
3 time-and-a-half of what I earned, that's it.
4 Sometimes -- now, at least, sometimes they give
5 me for overtime \$118 and sometimes it's \$25. I
6 don't understand why, nor have I asked.

7 Q It's a lot of money, huh?

8 A I think so.

9 Q You think you're worth it?

10 MR. WALLACE: Objection.

11 A When I work, yes, because I don't
12 play when I work.

13 Q You just testified that you played
14 soccer for a few minutes.

15 MR. WALLACE: Objection.

16 A I'm saying when there's no work,
17 it was never every day.

18 Q So you would play sometimes?

19 MR. WALLACE: Objection, asked and
20 answered.

21 A Like I said, once or twice.

22 Q Only once or twice, right?

23 A Around there, yes.

24 Q So you would play?

25 A Yes, you could say yes, but like I

1 P. Mendez

2 said, I'd like to explain.

3 Q Did you ever receive any of your
4 time sheets back from Mr. Vecchia advising you
5 that they were fraudulent?

6 A No. Nevertheless, a friend of
7 mine give him a time sheet in about September or
8 October and what he did was, he said, I don't
9 need this, and he said that word and he ripped
10 it up and put it in the garbage.

11 Q Which friend of yours was this?

12 A His name is Ronald.

13 Q Ronald what?

14 A I don't know his last name.

15 Q For whom did he work?

16 A For Louis.

17 Q He's a friend of yours and you
18 don't know his last name?

19 A We worked in the company, but the
20 co-workers, but they're not friends.

21 Q But you don't work with him, he
22 works for defendants?

23 A No, he used to work with Renato.

24 Q Did he ever work with you?

25 A Maybe once or twice, more than two

1 P. Mendez

2 times, but not much, because my workers were
3 Alejandro and Javier, those were my workers.

4 Q But you don't know Ronald's last
5 name?

6 A No, because they were two friends,
7 two Hondurans. If you ask me for Tulio's last
8 name, I don't know it either. Most of them,
9 they're called by their name and they called me
10 by my last name.

11 Q Did you file income tax returns
12 for the year 2002?

13 A 2002? Since I'm working, I have
14 done all my taxes.

15 Q Have you filed income tax returns
16 for the year 2003?

17 A Yes.

18 Q For the year 2004?

19 A Yes.

20 Q How about for the year 2005?

21 A Whenever I worked, I filed.

22 Q How about for the year 2006?

23 A Yes.

24 Q Did you file for the year 2007?

25 A Yes.

1 P. Mendez

2 Q How about for the year 2008?

3 A Yes.

4 Q How about for the year 2009?

5 A Yes.

6 Q How about for the year 2010?

7 A Yes.

8 Q Did you make more money in 2010
9 than you did in 2009?

10 A You're not going to believe me,
11 but with Louis, I worked four or five days and
12 the other company, they would pay me less, but
13 since they paid me prevailing wage rate, I made
14 more money than I made with Louis.

15 Louis paid me \$45, you could say
16 an hour; the other place they paid me \$30 and I
17 make more money.

18 Q So stopping doing work for the
19 defendants was the best thing that ever happened
20 to you?

21 A No. Because the problem is that
22 the others pay the way the law states. It's
23 like this year, I currently work two days, I
24 earn a little more than -- than Louis paid me in
25 five days.

1 P. Mendez

2 Q So because you left work for
3 defendants, you make more money now, correct?

4 A This year, yes, the last one, like
5 I said, paying me less but since they pay
6 prevailing taxes, it's more.

7 Q In 2010, you made more than you
8 made in 2009?

9 A Yes.

10 Q You suffered no damages for losing
11 your job with defendants in 2009?

12 MR. WALLACE: Objection.

13 A If I suffered, it's because he
14 paid more but he didn't pay the correct amount.
15 Do you understand?

16 So we're fighting about the
17 overtime, and I think you're going to ask this
18 question to everyone. Everyone has seen the
19 difference now that they working eight hours and
20 they earn more money than they were before.

21 Q So if you said in a court document
22 that you lost money because you were terminated
23 from the defendants, that would be false; is
24 that correct?

25 MR. WALLACE: Objection.

1 P. Mendez

2 A No. What I said is that the time
3 that I lost, the time that we missed where they
4 didn't give me work, that the other persons pay
5 correctly.

6 Q But you made more money by leaving
7 the defendants?

8 A Yes, I'm going to earn more money.

9 Q And you have earned more money?

10 A Yes.

11 Q So you haven't suffered any
12 damages as a result of being terminated by
13 defendants, as you claim?

14 MR. WALLACE: Objection.

15 A I worked less, they were paying me
16 less, but that would be -- what is logic? It's
17 supposed to be that they pay me \$45 working
18 five days and they pay me \$1,055.

19 When I work three days, they pay
20 me more money now like I making this year (sic).

21 Q So you work less hours, they pay
22 you less, but you make more?

23 A Yes.

24 Q So you're happy?

25 A Now, yes.

1 P. Mendez

2 Q You're happy since you left
3 defendants?

4 A No, I'm not happy. I'm happy
5 because of the work that I have, but I also told
6 Louis when I saw him downstairs, because he
7 asked if I wanted to return to work with him,
8 and I told him last year a company called
9 Pioneer, but I am not a person that likes to
10 switch companies.

11 I told him that sometimes money is
12 not so important, it's to feel good where I am.
13 That's my luck now, thank God.

14 Q If Louis Vecchia offered you a job
15 tomorrow, would you work for him?

16 A I would feel good and I would have
17 to think about it, because sometimes he says one
18 thing and sometimes I do what my heart says.
19 When I got this job, I didn't think about it
20 twice. If Louis -- I have to think about it for
21 me to have to return.

22 Q What does your heart say?

23 A It doesn't tell me to return.
24 Even if he tells me that I'm going to give you
25 \$100 to \$200 a day, it doesn't tell me. I

1 P. Mendez

2 prefer to stay where I am, because the last
3 two years, many companies offered me up to \$400
4 a day, but I say, I'm fine where I am. Money
5 helps to live, but it's not happiness.

6 Q What is happiness?

7 A You have this job, you feel good,
8 a new job appears for you and you don't know
9 what it is, you have to start anew.

10 So it's better to start -- to pick
11 something that you're not familiar with unless
12 you have to make a decision and you say this is
13 what I have to do.

14 Q Are any of your bosses lending you
15 money now?

16 A No.

17 Q Would they lend you money?

18 A If I asked them, yes, because they
19 know who I am and they trust in who I am. And
20 my boss, every once in awhile says, whatever you
21 need, I'm here. One thing that I always say is
22 that I don't like to get involved with my
23 bosses.

24 Q But you did with Louis?

25 A When I had to.

1 P. Mendez

2 Q When you had to do it, Louis
3 Vecchia was there for you?

4 A Yes.

5 Q This is how you repay him?

6 MR. WALLACE: Objection.

7 A This is not about him. Our
8 friendship continues if he wants me to be his
9 friend. It has nothing to do with friendship.
10 This has to do with overtime.

11 Q Are you taking the position that
12 some of the overtime hours that you're suing
13 Louis Vecchia for are overtime hours that you
14 utilized to repay the \$25,000 loan?

15 A No. Because the agreement with
16 him was that Saturdays were for him. Sometimes,
17 not always. Once in awhile, I would say, take
18 one day more or two days, but it was normally
19 Saturday.

20 Q So you're not suing him for any
21 Saturday overtime, are you?

22 A Saturdays, we're talking about
23 forty hours, five days on my behalf; the rest,
24 like I said, the agreement that I had with him
25 was to pay him on Saturdays, \$375.

1 P. Mendez

2 Q Are you suing him for any
3 Saturdays that you worked?

4 MR. WALLACE: Objection, asked and
5 answered.

6 Q Yes or no?

7 A The agreement that I had with him
8 was six, and I think Saturday is not on the
9 list. What I am asking for is my hours that
10 were at least five days, two hours a day, plus
11 whatever we had to pay after the ten hours.

12 Q You're only suing him for time for
13 Monday through Friday?

14 A Yes.

15 Q So you're not suing him for any
16 Saturday time?

17 MR. WALLACE: Objection, asked and
18 answered.

19 A Yes.

20 Q Are you suing him for any Sunday
21 time?

22 A No, Sunday -- sometimes, like I
23 said, sometimes I did work. The times that I
24 worked, I would tell him, well -- he would pay
25 me regular. He wouldn't pay me time-and-a-half,

1 P. Mendez

2 and he was supposed to pay time-and-a-half.

3 Q How many Saturdays did you work to
4 repay him?

5 A Well, it was
6 two years-and-something paying him Saturdays.

7 Q Did you work every Saturday?

8 A Before, yes, it was a very busy
9 company.

10 Q You say you worked every Saturday?

11 A Maybe one Saturday not, but most
12 of them, yes.

13 Q Did you work Saturdays in
14 December?

15 A In December, the first month, the
16 last month, no, the work was lighter. We worked
17 five days or it would rain and we wouldn't work.

18 Q Did you work Saturdays in January?

19 A No. In January, most of us were
20 already collecting. If we worked, it was
21 one day or two days.

22 Q Did you work Saturdays in
23 February?

24 A It's possible that we didn't and
25 it's possible that we did. During that time, we

1 P. Mendez

2 were usually unemployed.

3 Q Did you collect unemployment
4 benefits every year from December through April?

5 A Like I said before, the last time
6 that I came before when I didn't have work, I
7 wouldn't collect. But then my friends told me
8 that money was ours, so when I didn't have work,
9 I said that I was going to collect, and he said
10 that was no problem, and he would always tell us
11 when we could collect.

12 Q Did you ever collect unemployment
13 benefits?

14 A If I worked one day, I would
15 have -- if we earned more than \$405, I think it
16 is, if we earned more, we had to report it.

17 Q Did you always report it?

18 A Yes, always when worked, yes.

19 Q Did you collect unemployment
20 benefits in November 2009?

21 A November, I don't think -- I don't
22 know when I started, but when I had no work,
23 yes.

24 Q What about December 2009?

25 A I think I was collecting, yes.

1 P. Mendez

2 From when I didn't have work, I started to
3 collect.

4 Q How about January 2010?

5 A I think I was collecting, as well.

6 Q What did you tell unemployment was
7 the reason that you were not working?

8 A Well, what you always put down.
9 It was an application and I would fill it out.
10 I always put in all of them is whatever
11 reason -- what is the word? Lack of work, I
12 think it says.

13 Q So you lied to them?

14 MR. WALLACE: Objection.

15 A That's what I put down.

16 Q Did you lie to them by putting
17 that down?

18 A I don't know if I lied, but that's
19 what I always do.

20 Q Was it accurate, what you wrote
21 down?

22 A Yes. Whenever I don't have any
23 work, I call. Sometimes I put down -- if I ask
24 the name of the company and the part that says
25 that you don't have to fill it out, I don't

1 P. Mendez

2 touch.

3 Q You accurately reported to them in
4 the end of 2009 that there was not enough work
5 for you?

6 A Because that is what I always put
7 down.

8 Q It was accurate, correct?

9 A They no longer gave me work, but I
10 put that down.

11 Q You put down that they no longer
12 gave you work?

13 A No, lack of work.

14 Q Which was accurate at that time?

15 MR. WALLACE: Objection.

16 A No, I put that down. They fired
17 me before, but I didn't put down that they fired
18 me.

19 Q Why didn't you put down that they
20 fired you when they fired you?

21 A Because I was hopeful that in
22 January -- no, in February or March, they would
23 call me. But when I continued calling Tommy, he
24 said, no, no, no, I don't think that there is
25 anything else for you. If you want, call the

1 P. Mendez

2 boss. So for me, that was it.

3 Q So did you call the boss?

4 A No, only Tommy. Because Tommy was
5 the one that you would call in case of an
6 emergency because he was the dispatcher.

7 Q But Tommy was the one telling you
8 to call the boss?

9 MR. WALLACE: Objection.

10 A No.

11 Q Were you lazy?

12 A No.

13 Q Were you afraid to call the boss?

14 A No.

15 Q Were you embarrassed because you
16 were suing the man who helped you buy a house?

17 A No. Because he already had a
18 person in my place. If I called him or not,
19 they weren't going to give me that job.

20 Q How do you know if you never
21 called him?

22 A I am a hard worker. I know my
23 work. Every time that he needed me before, he
24 would call me, he would call my cell, my number.
25 Louis never called me on the phone; always

1 P. Mendez

2 called my cellular, I need you tomorrow, when
3 you come, bring Alejandro, bring so-and-so.

4 That's it, he didn't call me
5 because he didn't need me if there was another
6 person taking my place. What can I think?

7 Q Louis Vecchia would always call
8 you and tell you where to be?

9 A No.

10 Q You just said it.

11 MR. WALLACE: Objection.

12 A No, no, no. I am saying during
13 the cold time when we were out and he would call
14 me, it was either Louis or Tommy and I already
15 said that. But Tommy was the one that dealt
16 with it.

17 Q They only called you during the
18 cold months and told you where you needed to be,
19 they wouldn't call you during the warm months?

20 A It was pretty much Louis or if
21 there was any problems, we had to speak with
22 Tommy. If I had a problem at work and I would
23 call Tommy and he wouldn't answer, many times
24 Louis would tell me, I'm not your babysitter,
25 call Tommy. And I would say, I called Tommy and

1 P. Mendez

2 I have a problem at work, what should I do?

3 That's why I'm calling you.

4 Q So you knew how to call Louis
5 Vecchia, you just refused to call him?

6 A No.

7 Q You refused to call him?

8 A I didn't refuse him. He didn't
9 call me because he didn't need me.

10 Q Did you need him?

11 A I needed my job.

12 Q But you took no steps to try and
13 get your job?

14 MR. WALLACE: Objection.

15 Q Did you?

16 A I tried looking in other places,
17 because he threatened us before I left. He
18 threatened us and he told us that he was going
19 to send a letter to all of the company owners to
20 tell them not to give us work, and that they
21 were all friends of his.

22 Can I call him when he says
23 something like that to us?

24 Q This all happened after you filed
25 the lawsuit; is that correct?

1 P. Mendez

2 A That was in the process of being
3 done.

4 Q Really, because in your lawsuit,
5 you say it happened after the lawsuit was filed.

6 A He already knew. He knew the
7 problem that I was giving him because of the
8 overtime. That's when he decided not to give me
9 work.

10 Q He made that threat before you
11 filed the lawsuit or after you filed the
12 lawsuit?

13 A It was about in November, the last
14 few days of November.

15 Q Before you filed the lawsuit or
16 after you filed the lawsuit?

17 MR. WALLACE: Objection, asked and
18 answered.

19 A Like I said, I think it was
20 three weeks before.

21 Q He made that statement three weeks
22 before you filed the lawsuit?

23 A What did you say?

24 Q He made that statement three weeks
25 before you filed the lawsuit?

1 P. Mendez

2 MR. WALLACE: Objection.

3 A Like I said, if he fired me, it
4 was because I was complaining about the
5 overtime.

6 Q Answer the question, stop playing
7 games.

8 MR. WALLACE: Objection.

9 Q Did he make a statement that he
10 was going to call his friends before the
11 lawsuit?

12 A Yes, before.

13 Q Before you filed the lawsuit?

14 A But we give them the papers
15 before.

16 Q You gave them the lawsuit papers
17 before they were filed? You're digging a deep
18 hole.

19 MR. WALLACE: Objection.

20 A No, my attorneys.

21 Q Who cares what you gave your
22 attorneys?

23 Did you give anything to Louis
24 Vecchia?

25 A No.

1 P. Mendez

2 Q How did he know that you were
3 going to file the lawsuit before making that
4 statement?

5 A Like I said at the beginning,
6 Tommy knew, and we would tell Tommy, you know,
7 what we're going to do, and Tommy said do what
8 you have to do, I have nothing to do with it.

9 He says, this is mine, this is
10 what I put down; if he doesn't pay, there is
11 nothing that I can do.

12 MR. ZABELL: Subject to being
13 provided the documents that I have
14 previously requested and have yet to
15 receive, I will conclude this deposition.

16 You are going to be recalled when
17 your attorneys provide those documents
18 that they previously represented they
19 would provide to me.

20 I found you to be a completely
21 dishonest witness and I am disappointed
22 in your behavior.

23 MR. WALLACE: Objection.

24 For the record, we have already
25 stated that we will not be providing you

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P. Mendez

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with a passport, we will not be providing

3

any tax returns.

4

If he wants tax returns and the

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passport, he is required to go to the

6

Court. So we will not be providing those

7

documents.

8

And I have one question.

9

MR. ZABELL: Is this your

10

deposition?

11

MR. WALLACE: One little question.

12

MR. ZABELL: But is this your

13

deposition, Counsel? You have to

14

cross-notice.

15

MR. WALLACE: Will you give me

16

permission to ask the witness a question?

17

MR. ZABELL: It depends. What's

18

the question?

19

MR. WALLACE: No.

20

MR. ZABELL: Tell me what the

21

question is first and then, I will

22

decide.

23

MR. WALLACE: I don't think you're

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allowed to do that.

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MR. ZABELL: Then, I guess we're

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P. Mendez

not going to allow the question and we
will conclude for the day. Thank you.

MR. WALLACE: The question is:
You testified that you didn't complain to
the union.

And why didn't you complain to the
union?

MR. ZABELL: I will not permit it.
This deposition is concluded.

MR. WALLACE: I'm going to state
for the record that Mr. Zabell is
improperly preventing me from asking the
witness a question. That is my right
under the Federal Rules.

MR. ZABELL: That is incorrect.
This deposition is concluded.

(Time noted: 5:10 p.m.)

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)
 : ss
COUNTY OF)

I, PRACELIS MENDEZ, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of September 13, 2011; that the transcript is a true, complete and correct record of my testimony; and that the answers on the record as given by me are true and correct.

PRACELIS MENDEZ

Signed and subscribed to
before me, this ____ day
of _____, 20__

Notary Public, State of New York

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I N D E X

WITNESS	PAGE
Pracelis Mendez	
Examination by:	
Mr. Zabell	121

E X H I B I T S

<u>DEFENDANTS'</u>	<u>DESCRIPTION</u>	PAGE
Exhibit 5	Town of Babylon contractor employee daily attendance sheet	279
Exhibit 6	Pictures of GPS	291

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C E R T I F I C A T E

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STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

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I, MICHELLE ADAMO, a Shorthand Reporter
and Notary Public within and for the State of
New York, do hereby certify:

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10

That PRACELIS MENDEZ, the witness whose
examination is herein before set forth, was duly
sworn by me and that this transcript of such
examination is a true record of the testimony
given by such witness.

11

12

13

14

15

I further certify that I am not related to
any of the parties to this action by blood or
marriage and that I am in no way interested in
the outcome of this matter.

16

17

18

19

IN WITNESS WHEREOF, I have hereunto set my
hand this 13th day of September 2011.

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MICHELLE ADAMO

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ERRATA SHEET

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PAGE LINE

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_____	_____	REASON: _____

\$	\$80,000 [2] - 246:5, 246:8 \$80,000 [1] - 154:25 \$90 [1] - 292:25 \$98 [1] - 292:16	144:2, 213:25, 214:3, 222:2, 222:15, 295:16 2004 [3] - 144:2, 221:24, 295:18 2005 [8] - 214:8, 221:22, 223:2, 223:5, 223:6, 230:11, 257:7, 295:20 2006 [7] - 214:8, 221:20, 222:23, 223:7, 223:11, 230:11, 295:22 2007 [5] - 221:18, 223:17, 223:24, 224:10, 295:24 2008 [5] - 221:16, 224:13, 224:17, 243:6, 296:2 2009 [19] - 140:14, 140:17, 140:22, 191:24, 200:23, 220:16, 220:25, 221:7, 224:17, 224:21, 243:4, 243:6, 296:4, 296:9, 297:8, 297:11, 304:20, 304:24, 306:4 2010 [4] - 296:6, 296:8, 297:7, 305:4 2011 [3] - 118:14, 315:11, 317:20 220-2430 [1] - 248:23 24/7 [1] - 273:23 24th [1] - 230:15 279 [1] - 316:13 291 [1] - 316:14 2:26 [1] - 220:12	280:4, 280:7, 287:20 5 5 [4] - 266:22, 279:5, 279:8, 316:12 501 [1] - 119:5 59 [1] - 121:20 5:00 [9] - 126:22, 126:24, 127:6, 163:20, 192:11, 192:12, 285:24, 286:2, 286:19 5:10 [1] - 314:18 5:30 [1] - 245:3	278:14, 278:19, 280:4, 280:7, 280:19, 280:23, 280:25, 281:3, 281:8, 281:25, 282:18, 283:22, 284:9, 285:24, 285:25, 286:19 9 90-something [1] - 292:14 9:00 [7] - 153:15, 153:21, 192:13, 243:19, 283:20, 285:17 9th [3] - 280:23, 281:2, 282:2
	1 1 [1] - 223:21 1-5 [1] - 118:11 10017 [1] - 119:5 10:55 [1] - 118:14 10th [1] - 286:19 112 [1] - 276:23 11716 [1] - 119:10 11717 [1] - 121:21 11:00 [1] - 284:2 11:40 [1] - 150:5 11:47 [1] - 150:5 121 [1] - 316:7 1247 [1] - 280:16 12:01 [1] - 160:4 12:04 [1] - 160:4 12:17 [1] - 169:13 12:20 [1] - 169:13 13 [2] - 118:14, 315:10 138 [3] - 174:21, 174:22, 175:18 13th [1] - 317:20 15th [3] - 230:14, 230:21, 231:3 16th [2] - 201:7, 201:9 1992 [2] - 240:4, 240:5 1997 [1] - 201:14 1998 [9] - 140:8, 140:10, 140:13, 140:22, 200:23, 201:14, 201:18, 205:11, 205:14 19th [1] - 119:5 1:30 [1] - 220:12 1st [3] - 230:14, 230:21, 231:3	3 3:00 [5] - 171:20, 280:19, 280:23, 280:25, 281:25 3:30 [3] - 151:10, 151:22, 173:11 3:39 [1] - 274:5 3:47 [1] - 274:5	6 6 [3] - 291:15, 291:18, 316:14 6:00 [8] - 127:4, 143:22, 144:4, 144:6, 192:12, 243:25, 282:22 6:30 [23] - 127:2, 133:21, 133:22, 164:13, 173:14, 184:11, 185:21, 189:21, 189:23, 192:11, 193:25, 196:24, 245:3, 246:15, 283:19, 283:25, 284:4, 284:12, 285:8, 285:12, 285:18, 286:3, 286:17 6:50 [1] - 164:14	A a.m [8] - 118:14, 144:4, 150:5, 153:15, 192:12, 245:3, 285:17 ability [7] - 121:25, 122:6, 167:10, 172:3, 172:14, 172:20, 263:21 able [4] - 233:23, 263:7, 264:19, 264:23 above-mentioned [1] - 118:21 absolutely [3] - 159:10, 241:2, 241:11 accept [3] - 148:23, 245:8, 245:13 accepted [5] - 149:4, 210:8, 210:9, 245:4, 245:5 accident [1] - 153:18 according [6] - 142:25, 242:10, 248:2, 248:3, 250:20, 254:9 account [1] - 225:24 accountant [1] - 258:6 accurate [7] - 261:16, 262:2, 281:14, 281:20, 305:20, 306:8, 306:14 accurately [1] - 306:3 accusatory [1] - 169:4 act [1] - 247:7 action [1] - 317:16 actual [3] - 151:15, 197:13, 277:3
	2 2 [1] - 223:21 20 [1] - 315:22 2001 [8] - 140:8, 140:10, 140:13, 140:16, 205:11, 205:14, 214:6 2002 [4] - 222:4, 222:8, 295:12, 295:13 2003 [7] - 142:17,	4 40/40/40 [1] - 243:9 44 [1] - 124:15 48 [1] - 291:19 4875 [2] - 118:15, 119:10 4:00 [4] - 151:11, 173:12, 243:24, 287:6 4:09 [1] - 287:20 4:30 [4] - 126:23,	7 7-Eleven [2] - 152:16, 153:18 7:00 [14] - 125:21, 126:9, 126:10, 151:10, 151:13, 151:19, 152:11, 164:14, 167:8, 167:9, 192:12, 282:5, 284:4 7:30 [2] - 151:11, 282:5	
		8 8 [1] - 278:23 8:00 [5] - 151:12, 192:12, 246:17, 281:8, 287:3 8:30 [17] - 246:17,		
\$1,051 [3] - 243:10, 243:11 \$1,055 [2] - 214:14, 298:18 \$1,100 [1] - 214:13 \$1,400 [1] - 212:10 \$1,500 [1] - 212:10 \$1.25 [1] - 223:21 \$10,000 [1] - 264:22 \$100 [1] - 299:25 \$100,000 [2] - 148:19, 155:2 \$118 [1] - 293:5 \$200 [6] - 132:20, 212:17, 212:18, 223:8, 290:25, 299:25 \$25 [3] - 292:16, 292:23, 293:5 \$25,000 [12] - 176:22, 209:13, 209:16, 210:2, 245:14, 256:24, 257:5, 258:7, 258:13, 264:21, 266:10, 301:14 \$30 [1] - 296:16 \$300 [3] - 212:9, 212:13, 212:21 \$35 [1] - 223:9 \$375 [2] - 247:12, 301:25 \$400 [1] - 300:3 \$405 [1] - 304:15 \$42 [1] - 223:15 \$43 [1] - 224:4 \$44 [11] - 222:20, 222:22, 223:15, 224:3, 224:14, 224:15, 224:17, 224:25, 292:20 \$45 [6] - 224:17, 224:22, 224:23, 292:20, 296:15, 298:17 \$45.12 [1] - 224:25 \$47 [1] - 292:25 \$5,000 [4] - 148:23, 154:15, 154:22, 155:5 \$500 [6] - 176:21, 180:18, 180:19, 180:23, 181:10, 266:19 \$60,000 [1] - 258:19 \$61 [1] - 220:23 \$64 [1] - 220:23 \$65,000 [1] - 258:19 \$76 [1] - 220:21				

<p>ADAMO [3] - 118:22, 317:7, 317:24 add [1] - 257:22 addition [1] - 212:19 address [1] - 121:18 administer [1] - 120:18 admonish [1] - 165:24 advise [2] - 156:3, 172:9 advised [1] - 199:20 advising [4] - 161:22, 176:10, 241:3, 294:4 affect [1] - 198:18 affected [1] - 198:13 afford [1] - 264:19 afraid [1] - 307:13 afternoon [1] - 188:16 afternoons [1] - 184:12 afterwards [1] - 204:12 ago [1] - 140:5, 142:2, 142:15, 200:20, 244:14, 244:20, 250:20, 271:8, 273:16, 273:17, 273:18 agree [1] - 176:23 AGREED [3] - 120:4, 120:10, 120:15 agreement [10] - 133:15, 174:24, 176:24, 177:8, 177:9, 177:10, 223:7, 301:15, 301:24, 302:7 ahead [4] - 159:22, 234:15, 251:11, 272:4 ALEJANDRO [1] - 118:4 Alejandro [14] - 185:13, 185:22, 186:11, 189:14, 190:25, 191:5, 191:6, 191:7, 191:9, 191:12, 191:20, 191:21, 295:3, 308:3 alert [1] - 199:5 ALEX [1] - 118:4 Alex [2] - 186:19, 187:16 allow [6] - 169:6, 283:23, 285:11, 285:16, 286:12, 314:2 allowed [1] - 313:24 almost [16] - 130:14, 153:15, 177:15,</p>	<p>178:9, 184:15, 195:10, 195:12, 198:6, 205:6, 211:18, 218:6, 243:6, 243:9, 277:11, 277:12, 284:11 alms [1] - 148:5 alone [1] - 240:15 Amaya [5] - 185:13, 185:22, 186:11, 191:7, 191:9 AMAYA [1] - 118:4 America [2] - 135:13, 286:9 Americans [1] - 136:23 Amir [2] - 186:19, 187:16 AMIR [1] - 118:4 amount [9] - 213:10, 221:6, 221:14, 222:6, 225:6, 225:8, 243:10, 289:12, 297:14 AND [3] - 120:4, 120:10, 120:15 anecdote [1] - 231:21 anew [1] - 300:9 anger [1] - 129:2 angered [1] - 129:7 angry [5] - 229:23, 256:3, 285:9, 285:11, 285:14 answer [75] - 122:8, 123:25, 124:25, 125:12, 126:17, 127:15, 128:4, 129:24, 130:20, 131:7, 131:8, 131:13, 131:15, 131:23, 132:14, 134:7, 135:2, 137:16, 138:5, 138:16, 143:5, 150:13, 154:9, 155:17, 155:23, 156:5, 156:25, 157:5, 157:7, 157:10, 157:20, 158:3, 161:15, 165:9, 165:20, 167:14, 167:23, 169:18, 170:2, 171:12, 172:7, 172:15, 172:21, 173:5, 174:13, 176:5, 178:14, 181:21, 186:3, 202:3, 205:17, 220:18, 220:19, 221:10, 223:23, 224:6, 232:17, 235:7, 235:10, 235:18,</p>	<p>236:2, 239:10, 247:22, 250:15, 251:9, 253:3, 257:21, 262:9, 263:23, 270:13, 271:23, 287:9, 308:23, 311:6 answered [24] - 123:24, 124:24, 153:12, 156:12, 169:25, 170:17, 181:20, 203:20, 216:7, 227:10, 228:9, 235:17, 247:21, 266:12, 272:12, 275:19, 276:13, 288:8, 289:2, 292:13, 293:20, 302:5, 302:18, 310:18 answering [5] - 135:5, 168:7, 175:19, 186:4, 221:3 answers [7] - 121:6, 130:11, 135:22, 137:9, 158:22, 186:8, 315:13 apologize [1] - 144:22 application [2] - 142:6, 305:9 appointment [1] - 236:18 appropriate [1] - 229:8 appropriately [1] - 216:5 April [5] - 249:11, 259:4, 259:17, 259:20, 304:4 area [1] - 148:2 AREVALO [1] - 118:5 Arevalo [2] - 186:19, 187:16 argument [1] - 144:17 argumentative [1] - 159:2 Arias [1] - 119:21 arrest [2] - 240:4, 240:6 arrested [4] - 239:15, 239:18, 239:21, 239:24 arrive [4] - 144:9, 153:17, 154:19, 195:13 arrived [2] - 189:24, 190:2 ashamed [1] - 246:23</p>	<p>Asphalt [14] - 139:20, 139:25, 140:21, 141:21, 150:22, 207:21, 238:12, 259:11, 262:18, 274:7, 274:16, 274:20, 274:25, 275:3 asphalt [2] - 277:12, 286:4 ASPHALT [1] - 118:10 assert [1] - 154:4 assignments [1] - 146:4 assistance [1] - 209:20 ASSOCIATES [1] - 119:9 assumed [1] - 157:11 assured [1] - 162:15 attendance [3] - 279:7, 279:15, 316:13 attention [7] - 268:2, 268:5, 277:16, 289:4, 289:5, 290:6, 290:8 attitude [2] - 254:14, 254:25 attorney [23] - 131:5, 131:14, 134:3, 153:13, 155:2, 155:6, 155:9, 157:16, 158:10, 160:6, 162:21, 171:18, 175:22, 175:24, 179:17, 185:8, 199:2, 218:22, 225:17, 225:19, 226:18, 226:19, 238:4 Attorney's [2] - 218:15, 218:19 attorney's [2] - 130:18, 155:5 attorney/client [3] - 154:2, 161:19, 161:21 attorneys [15] - 119:4, 119:9, 120:5, 177:2, 180:11, 180:12, 181:7, 181:9, 220:5, 226:7, 252:20, 271:10, 311:20, 311:22, 312:17 August [2] - 286:9, 286:19 authorization [1] - 202:11 authorized [1] - 120:18 available [3] -</p>	<p>235:14, 235:19, 262:11 Avenue [2] - 119:5, 276:24 awake [1] - 199:3 aware [1] - 126:13 awhile [4] - 168:15, 250:20, 300:20, 301:17</p>
B				
<p>Babylon [9] - 279:6, 279:12, 279:14, 282:7, 283:7, 284:5, 284:11, 284:24, 316:12 babysitter [1] - 308:24 bad [5] - 138:25, 198:16, 198:17, 254:13, 254:25 ball [2] - 277:20, 277:22 bargaining [1] - 174:23 basic [1] - 155:24 basis [6] - 123:19, 161:16, 197:11, 239:6, 239:12 Bates [1] - 280:15 Bay [1] - 217:18 became [1] - 174:22 BEFORE [1] - 118:18 beginning [1] - 170:8, 204:12, 205:2, 207:3, 207:6, 222:23, 231:6, 257:3, 272:6, 288:2, 312:5 begins [1] - 163:9 behalf [1] - 301:23 behave [1] - 169:16 behavior [4] - 158:18, 159:3, 209:7, 312:22 benefit [1] - 214:19 benefits [5] - 252:6, 292:16, 292:23, 304:4, 304:13, 304:20 best [2] - 185:17, 296:19 better [5] - 177:16, 216:25, 266:4, 282:10, 300:10 between [5] - 120:5, 143:15, 151:4, 179:17, 274:7 beyond [1] - 160:20 big [3] - 145:13,</p>				

<p>147:25, 235:8 billboard [2] - 267:22, 268:4 Billy [4] - 290:25, 291:3, 291:5, 291:10 Billy's [1] - 291:8 bit [3] - 189:13, 246:22, 247:5 blood [1] - 317:16 blue [2] - 260:20, 261:21 Bohemia [1] - 118:16 bohemia [1] - 119:10 book [3] - 174:25, 175:17, 213:11 borrowed [2] - 209:13, 264:18 boss [40] - 138:14, 139:17, 143:21, 144:21, 146:5, 151:19, 179:14, 188:20, 201:14, 206:21, 208:18, 210:8, 231:14, 244:8, 248:19, 252:25, 254:18, 259:12, 259:24, 260:15, 260:17, 260:19, 260:22, 261:22, 263:4, 263:24, 265:24, 271:15, 271:17, 273:14, 277:10, 277:24, 280:21, 290:19, 291:4, 300:20, 307:2, 307:3, 307:8, 307:13 boss's [1] - 260:20 bosses [5] - 128:22, 195:22, 277:9, 300:14, 300:23 bother [3] - 128:21, 194:20, 206:25 bothered [1] - 206:22 box [1] - 195:16 boy [1] - 235:8 break [22] - 150:3, 157:4, 157:16, 157:20, 159:12, 159:15, 159:18, 159:19, 159:22, 160:6, 161:13, 162:7, 162:20, 168:21, 168:25, 169:6, 171:17, 220:10, 220:13, 273:25, 287:18 breaks [1] - 285:7 Brentwood [1] - 121:20</p>	<p>brick [1] - 232:9 bring [8] - 147:15, 200:8, 200:14, 233:13, 234:3, 284:11, 308:3 bringing [1] - 277:16 brother [17] - 138:7, 138:11, 138:13, 138:15, 138:16, 138:18, 139:7, 139:11, 139:19, 143:23, 143:24, 144:9, 144:11, 144:16, 145:17, 190:21, 287:16 busy [2] - 231:14, 303:8 buy [3] - 153:18, 257:9, 307:16 BY [3] - 119:6, 119:11, 121:13</p> <p style="text-align: center;">C</p> <p>calculate [2] - 263:17, 263:21 calculated [1] - 223:9 cannot [5] - 157:20, 161:5, 172:8, 235:9, 240:11 capable [1] - 186:4 Capital [1] - 218:12 car [8] - 144:8, 147:9, 185:24, 189:8, 234:4, 234:5, 266:4 card [1] - 257:10 care [3] - 232:20, 265:15, 273:25 cared [1] - 193:11 careful [1] - 147:23 cares [1] - 311:21 Carlton [1] - 276:24 CARLOS [1] - 118:6 Carlos [4] - 192:20, 192:22, 196:2, 196:11 cars [2] - 147:17, 147:18 case [8] - 175:14, 176:8, 176:21, 200:12, 216:18, 271:10, 307:5 cash [26] - 132:20, 210:22, 211:6, 211:9, 211:14, 211:15, 211:17, 211:19, 211:21, 212:6, 212:12, 213:3, 238:7, 238:14, 238:18,</p>	<p>238:21, 238:22, 289:9, 289:13, 289:19, 289:24, 290:4, 290:12, 290:17, 290:22, 290:23 CASTILLO [1] - 118:7 Castillo [2] - 197:5, 197:8 caught [1] - 247:6 cell [1] - 307:24 cellular [1] - 308:2 certain [2] - 131:19, 197:4 certification [1] - 120:7 certify [3] - 315:8, 317:9, 317:15 CHANGE [10] - 318:6, 318:8, 318:10, 318:12, 318:14, 318:16, 318:18, 318:20, 318:22, 318:24 changed [1] - 248:24 changes [2] - 258:19, 318:3 characterization [1] - 209:3 charge [8] - 145:10, 207:16, 242:11, 242:19, 257:13, 276:19, 277:15, 283:4 cheaper [1] - 211:23 check [27] - 128:14, 128:15, 136:12, 142:3, 142:11, 201:11, 211:11, 212:16, 212:18, 213:2, 217:17, 225:10, 225:11, 233:7, 233:23, 239:3, 243:10, 254:18, 260:16, 268:11, 268:23, 274:24, 275:21, 277:15, 288:10 checked [1] - 285:13 checking [2] - 140:7, 256:4 checks [7] - 142:5, 210:19, 211:3, 211:9, 211:13, 268:8, 290:7 children [3] - 146:19, 149:12, 264:15 Christmas [1] - 230:18 Christopher [1] - 207:22</p>	<p>CHRISTOPHER [1] - 118:11 City [3] - 127:5, 163:19, 163:21 claim [3] - 131:20, 217:8, 298:13 claimed [1] - 134:9 claiming [2] - 152:2, 213:16 clear [3] - 135:24, 145:5, 246:20 clearly [3] - 169:2, 182:6, 285:15 client [2] - 172:3, 241:17 close [3] - 230:16, 230:17, 264:25 closed [2] - 199:4, 264:22 closing [1] - 199:4 co [3] - 289:19, 289:24, 294:20 co-workers [3] - 289:19, 289:24, 294:20 coach [1] - 160:25 coffee [3] - 152:14, 152:16, 153:18 cold [5] - 286:7, 286:8, 286:10, 308:13, 308:18 collect [7] - 304:3, 304:7, 304:9, 304:11, 304:12, 304:19, 305:3 collected [1] - 237:23 collecting [3] - 303:20, 304:25, 305:5 collective [1] - 174:23 comfortable [1] - 136:3 coming [2] - 149:16, 285:22 committing [1] - 156:20 communication [3] - 138:17, 188:10, 188:11 companies [14] - 123:13, 123:14, 140:25, 141:13, 141:15, 207:21, 208:12, 208:16, 274:19, 274:22, 276:16, 283:24, 299:10, 300:3 company [34] - 132:12, 133:2, 134:24, 135:11,</p>	<p>139:18, 141:2, 141:8, 142:10, 146:21, 150:21, 207:16, 208:14, 218:5, 220:20, 220:24, 221:4, 234:6, 238:9, 249:6, 249:15, 249:22, 255:6, 274:23, 275:10, 275:17, 275:20, 291:9, 291:10, 294:19, 296:12, 299:8, 303:9, 305:24, 309:19 compensated [2] - 163:5, 169:22 complain [4] - 254:12, 269:21, 314:5, 314:7 complained [3] - 206:8, 206:11, 206:15 complaining [3] - 253:12, 254:10, 311:4 complaint [5] - 269:11, 269:18, 269:23, 270:4, 270:11 complaints [2] - 207:5, 270:16 complete [5] - 155:17, 167:25, 235:3, 288:12, 315:11 completely [2] - 286:15, 312:20 computer [7] - 260:16, 260:17, 261:19, 261:20, 262:5, 262:11, 288:6 concern [2] - 167:20, 241:21 concerned [2] - 256:5, 290:10 conclude [2] - 312:15, 314:3 concluded [2] - 314:10, 314:17 Concrete [1] - 218:12 conditions [1] - 143:9 cones [1] - 148:7 confidential [2] - 154:2, 289:16 confirm [2] - 161:9, 162:5 confirming [1] - 160:19 confuse [1] - 219:13 confused [3] - 178:19, 179:5, 179:18 confusing [3] -</p>
---	--	--	--	--

<p>122.4, 219:17, 241:19 confusion [1] - 134:13 consequence [1] - 241:7 consistent [1] - 209:6 content [2] - 161:8, 161:19 continue [8] - 139:4, 149:25, 158:20, 159:3, 179:18, 200:3, 257:19, 265:8 continued [2] - 259:11, 306:23 CONTINUED [2] - 118:18, 121:13 continues [1] - 301:8 contract [5] - 142:25, 143:9, 170:5, 179:10, 179:11 contractor [3] - 279:6, 279:15, 316:13 control [3] - 145:12, 172:3, 247:5 conversation [4] - 148:11, 149:6, 161:9, 162:17 copies [2] - 253:20, 292:8 copy [2] - 199:9, 253:17 corazón [1] - 233:20 Corp [3] - 140:2, 141:21, 238:12 CORP [2] - 118:10 Corporation [1] - 139:21 corporation [4] - 139:23, 140:11, 140:16, 238:11 correct [77] - 123:5, 128:2, 128:19, 134:11, 141:21, 141:22, 143:3, 143:25, 145:19, 145:22, 148:16, 150:7, 150:11, 150:24, 151:16, 152:3, 152:9, 153:4, 163:24, 179:25, 180:13, 182:7, 184:21, 186:12, 186:16, 187:3, 187:6, 187:12, 189:24, 191:17, 194:24, 198:3, 198:8, 199:16, 204:16, 206:16, 207:2, 207:7, 212:3, 212:22, 214:11,</p>	<p>214:16, 214:20, 217:3, 227:5, 228:7, 228:18, 229:18, 229:24, 232:4, 233:24, 239:7, 243:4, 254:6, 259:17, 259:20, 261:2, 261:11, 264:8, 264:19, 267:20, 268:6, 275:13, 277:4, 279:16, 282:22, 282:25, 286:20, 288:11, 290:14, 297:3, 297:14, 297:24, 306:8, 309:25, 315:12, 315:14 correctly [5] - 122:9, 137:2, 150:18, 150:24, 298:5 Counsel [5] - 166:15, 166:18, 175:14, 199:8, 313:13 Counsel's [1] - 247:16 Counselor [1] - 159:20 count [2] - 251:3, 251:4 counting [1] - 263:19 country [3] - 187:23, 201:18, 201:21 COUNTY [2] - 315:6, 317:5 couple [1] - 242:25 course [1] - 125:19 COURT [1] - 118:2 Court [8] - 120:20, 161:3, 200:15, 241:4, 241:8, 241:9, 269:24, 313:6 court [2] - 229:10, 297:21 cover [2] - 206:23, 274:13 covered [1] - 240:10 crazy [1] - 273:22 creating [1] - 162:10 credit [2] - 257:10 crew [29] - 183:17, 184:2, 184:3, 185:15, 186:21, 187:15, 188:19, 188:20, 188:21, 189:3, 189:12, 189:18, 189:20, 190:7, 190:14, 190:22, 192:7, 192:24, 194:4, 194:9, 195:6, 195:11, 195:18, 196:10,</p>	<p>196:18, 197:9, 197:20, 259:15 cross [1] - 313:14 cross-notice [1] - 313:14</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>DA [1] - 218:22 DA's [1] - 218:20 daily [6] - 123:19, 279:6, 279:15, 287:22, 288:14, 316:13 damage [1] - 232:25 damages [2] - 297:10, 298:12 dark [1] - 243:19 date [11] - 125:25, 144:3, 181:14, 201:4, 205:13, 254:4, 254:23, 257:8, 259:4, 279:9, 291:16 dates [1] - 126:3 daughter [2] - 180:8, 180:13 days [32] - 126:3, 137:25, 149:17, 167:9, 191:18, 198:15, 210:18, 210:24, 227:14, 227:22, 228:6, 228:16, 228:20, 231:9, 250:21, 251:12, 252:14, 271:8, 273:12, 273:16, 291:4, 296:11, 296:23, 296:25, 298:18, 298:19, 301:18, 301:23, 302:10, 303:17, 303:21, 310:14 deal [1] - 247:11 dealt [1] - 308:15 December [8] - 230:15, 231:13, 254:3, 259:22, 303:14, 303:15, 304:4, 304:24 decide [1] - 313:22 decided [4] - 200:11, 246:9, 261:23, 310:8 decision [4] - 169:9, 260:9, 260:23, 300:12 declare [1] - 178:8 declared [1] - 178:6 deduct [1] - 214:23 deductions [3] -</p>	<p>214:15, 215:4, 288:24 deep [1] - 311:17 deeper [1] - 162:16 Deer [1] - 142:16 defend [1] - 266:18 defendant [2] - 208:12, 264:8 defendants [54] - 122:11, 123:22, 127:25, 128:18, 136:10, 137:2, 138:8, 138:12, 139:6, 139:12, 139:23, 141:20, 145:18, 145:21, 146:21, 150:17, 151:7, 183:6, 192:16, 222:8, 222:17, 223:2, 225:4, 226:8, 230:7, 230:10, 234:25, 236:4, 237:5, 240:20, 242:9, 247:19, 247:25, 251:7, 252:17, 254:13, 258:15, 259:7, 262:14, 262:18, 264:18, 269:13, 274:19, 287:15, 287:22, 289:10, 294:22, 296:19, 297:3, 297:11, 297:23, 298:7, 298:13, 299:3 Defendants [3] - 118:12, 118:20, 119:9 DEFENDANTS [1] - 316:11 defendants [3] - 143:16, 146:12, 248:16 Defendants [4] - 279:5, 279:8, 291:15, 291:18 defended [1] - 145:10 demand [2] - 145:2, 145:4 department [1] - 231:20 depended [1] - 123:3 deposition [29] - 120:16, 130:8, 155:25, 156:4, 159:4, 159:21, 160:11, 160:19, 161:10, 161:13, 162:6, 162:22, 176:11, 179:7, 181:14, 181:16, 182:2, 182:5, 199:7, 199:21, 203:6, 229:2, 247:5, 312:15,</p>	<p>313:10, 313:13, 314:10, 314:17, 315:10 DESCRIPTION [1] - 316:11 deserve [1] - 148:15 desk [2] - 181:4, 288:3 destroy [5] - 255:5, 255:9, 255:13, 256:2, 256:10 destroyed [4] - 232:21, 237:8, 255:23, 256:7 detective [9] - 218:18, 219:2, 219:3, 219:5, 219:10, 219:19, 219:22, 236:16, 236:19 determined [1] - 236:11 diesel [1] - 265:15 difference [6] - 143:15, 151:8, 182:15, 224:18, 274:7, 297:19 different [16] - 144:8, 151:4, 182:11, 183:3, 183:9, 184:4, 184:12, 184:14, 184:18, 187:25, 189:4, 196:25, 197:25, 247:3, 276:15, 286:12 difficult [14] - 122:23, 125:24, 216:12, 216:14, 216:15, 219:12, 244:6, 244:10, 244:12, 244:18, 265:23, 276:14, 286:6, 291:24 digging [1] - 311:17 directed [3] - 202:6, 202:8, 202:9 directing [3] - 159:11, 160:21, 165:20 directly [8] - 125:9, 125:17, 125:23, 171:7, 186:15, 198:8, 228:6, 228:17 disable [1] - 229:20 disabled [2] - 128:2, 229:16 disagree [1] - 209:2 disappeared [3] - 187:22, 188:6, 188:7 disappointed [1] - 312:21 disappointing [1] -</p>
---	--	--	--	--

<p>209:8 disclose [4] - 154:2, 160:15, 160:17, 162:4 disconnect [2] - 233:22, 256:11 disconnected [5] - 128:10, 232:25, 256:15, 256:18, 256:21 discuss [2] - 161:12, 162:21 discussed [1] - 162:6 discussion [3] - 159:23, 159:25, 178:12 dishonest [1] - 312:21 dispatcher [1] - 307:6 displayed [1] - 155:16 disregard [2] - 205:16, 220:18 disrespecting [1] - 145:3 distinguish [1] - 292:6 DISTRICT [2] - 118:2, 118:2 District [2] - 218:15, 218:19 district [1] - 218:22 doable [1] - 124:19 document [20] - 179:8, 179:20, 179:21, 179:24, 180:10, 266:21, 266:25, 278:21, 279:10, 279:20, 281:13, 281:18, 281:19, 281:20, 282:8, 286:15, 286:18, 291:17, 291:20, 297:21 documentation [2] - 209:25, 226:7 documents [8] - 175:13, 180:16, 234:11, 234:16, 281:11, 312:13, 312:17, 313:7 DOES [1] - 118:11 dollar [4] - 124:13, 221:12, 221:13, 224:18 dollars [6] - 124:13, 215:21, 215:23, 222:12, 266:3, 292:25 Dominick [3] -</p>	<p>260:18, 260:19, 261:19 done [4] - 194:16, 261:9, 295:14, 310:3 Donna [1] - 258:2 doors [2] - 264:22, 264:25 double [5] - 124:17, 124:18, 247:10, 275:23, 292:17 down [30] - 126:12, 133:21, 134:21, 135:9, 148:25, 164:17, 164:19, 164:22, 167:7, 210:17, 229:12, 235:8, 240:16, 260:22, 265:19, 283:19, 285:7, 305:8, 305:15, 305:17, 305:21, 305:23, 306:7, 306:10, 306:11, 306:16, 306:17, 306:19, 312:10 downstairs [4] - 230:13, 265:9, 271:15, 299:6 drive [4] - 147:3, 185:22, 189:5, 195:15 driven [1] - 186:15 driver [1] - 234:4 drivers [2] - 185:6, 267:3 drives [1] - 273:21 dropped [2] - 253:7, 253:14 drove [1] - 186:11 dues [3] - 214:16, 215:12, 215:25 duly [3] - 121:3, 121:9, 317:11 dump [1] - 132:18 during [13] - 132:24, 136:9, 157:16, 161:12, 162:6, 162:20, 229:2, 259:6, 259:10, 303:25, 308:12, 308:17, 308:19</p>	<p>304:15, 304:16 EASTERN [1] - 118:2 eat [3] - 152:17, 278:8, 278:10 Edwin [4] - 192:3, 192:5, 196:3, 196:10 EDWIN [1] - 118:6 effect [1] - 120:19 eight [16] - 122:25, 123:8, 132:8, 134:16, 134:19, 134:20, 135:8, 151:9, 183:10, 194:6, 223:10, 227:16, 272:9, 282:4, 282:11, 297:19 either [4] - 124:19, 180:12, 295:8, 308:14 EI [3] - 139:9, 200:17, 200:24 eleven [2] - 132:8, 184:23 embarrassed [3] - 246:23, 247:14, 307:15 emergency [1] - 307:6 employee [3] - 279:7, 279:15, 316:13 employees [1] - 147:3 employer [4] - 139:15, 139:16, 218:9, 218:11 employment [4] - 143:10, 248:16, 262:13, 262:17 end [5] - 154:16, 163:11, 230:14, 231:10, 306:4 ended [4] - 163:10, 237:24, 253:23, 288:22 ending [3] - 262:13, 262:16, 280:4 ends [1] - 136:21 engineer [1] - 242:14 English [9] - 121:5, 121:6, 135:15, 175:6, 175:7, 175:8, 177:13, 177:14, 229:7 ensuring [1] - 155:24 entirely [1] - 209:6 entities [1] - 274:15 entitled [8] - 122:19, 123:22, 124:22, 126:6, 137:8, 158:14, 271:25, 273:3 entity [1] - 140:20 equally [1] - 271:20 equipment [7] -</p>	<p>145:14, 146:12, 147:22, 204:15, 232:17, 236:6, 237:4 ERRATA [1] - 318:2 ESCALANTE [1] - 118:6 Escalante [2] - 192:20, 192:22 ESQ [2] - 119:6, 119:11 estimate [8] - 250:18, 250:24, 251:6, 251:10, 251:17, 251:20, 251:21, 272:3 evening [1] - 184:17 exact [7] - 125:25, 140:6, 144:3, 201:4, 225:8, 254:4, 259:3 exactly [3] - 224:24, 225:3, 248:14 Examination [1] - 316:6 EXAMINATION [2] - 118:18, 121:13 examination [2] - 317:11, 317:13 examined [1] - 121:11 example [1] - 272:18 Except [1] - 198:7 except [1] - 120:11 exchanged [1] - 175:13 excluded [1] - 200:5 excuse [2] - 155:2, 229:22 excuses [1] - 130:17 Exhibit [6] - 266:22, 278:23, 279:5, 279:8, 291:15, 291:18 exhibit [2] - 316:12, 316:14 exhibits [1] - 292:9 exist [1] - 234:7 expect [1] - 209:7 expert [1] - 273:20 explain [17] - 130:25, 131:2, 131:4, 165:7, 165:18, 170:6, 173:4, 180:13, 180:21, 180:22, 218:3, 235:9, 244:7, 244:11, 251:18, 286:16, 294:2 explained [8] - 138:9, 141:3, 148:14, 159:7, 168:14, 179:2, 179:3, 247:11 explaining [1] - 164:18</p>	<p>explains [1] - 177:4 explanations [3] - 130:17, 165:9, 165:20 explode [1] - 139:2 exploring [1] - 241:18 eyes [4] - 199:4, 245:15, 245:16</p>
F				
<p>fact [1] - 206:14 fair [2] - 225:2, 280:6 FAJARDO [1] - 118:5 Fajardo [3] - 187:19, 187:22, 271:6 false [1] - 297:23 familiar [3] - 186:23, 190:11, 300:11 family [7] - 149:21, 181:4, 201:16, 208:3, 232:7, 232:8, 287:14 far [2] - 155:16, 167:25 favor [4] - 138:6, 265:20, 265:24, 266:2 favors [3] - 265:7, 265:12, 265:25 February [4] - 201:6, 201:10, 303:23, 306:22 Federal [2] - 269:24, 314:15 fees [4] - 155:2, 266:9, 266:14, 266:18 felt [1] - 138:25 few [11] - 137:24, 138:16, 198:10, 198:11, 198:12, 238:22, 247:24, 270:2, 270:4, 293:14, 310:14 fifteen [10] - 133:20, 144:10, 144:11, 144:13, 153:21, 154:19, 163:16, 248:23, 263:18, 273:16 Fifth [1] - 119:5 fifty [1] - 243:22 fight [2] - 233:3, 246:9 fighting [2] - 271:22, 297:16 figure [4] - 125:4, 227:13, 262:24, 273:2 figured [1] - 268:20 file [3] - 295:11, 295:24, 312:3</p>				

<p>filed [24] - 155:9, 252:18, 252:19, 253:8, 253:25, 263:25, 269:12, 269:19, 269:23, 270:5, 270:11, 270:18, 295:15, 295:21, 309:24, 310:5, 310:11, 310:15, 310:16, 310:22, 310:25, 311:13, 311:17</p> <p>filing [2] - 120:6, 155:12</p> <p>fill [9] - 142:6, 206:19, 280:20, 281:17, 287:22, 287:25, 288:20, 305:9, 305:25</p> <p>filled [1] - 238:10</p> <p>fine [4] - 136:5, 139:2, 203:12, 300:4</p> <p>finish [23] - 125:19, 133:10, 133:12, 142:24, 151:10, 151:11, 151:21, 151:23, 152:25, 164:22, 166:11, 167:5, 171:10, 173:6, 193:15, 206:20, 238:7, 243:24, 243:25, 244:8, 284:14, 284:15, 284:19</p> <p>finished [13] - 122:14, 126:10, 133:11, 133:15, 144:10, 151:23, 166:17, 171:23, 174:11, 249:3, 277:11, 277:12, 284:12</p> <p>finishing [1] - 193:8</p> <p>fire [1] - 231:20</p> <p>fired [14] - 144:16, 145:18, 248:16, 254:10, 269:17, 270:3, 270:7, 270:10, 270:15, 306:16, 306:17, 306:20, 311:3</p> <p>first [22] - 121:2, 121:9, 139:24, 149:12, 149:22, 166:9, 168:13, 190:24, 191:11, 205:6, 205:7, 205:20, 225:5, 226:3, 233:6, 256:14, 259:13, 259:15, 277:15, 303:15, 313:21</p>	<p>fit [1] - 148:3</p> <p>five [29] - 133:25, 148:6, 160:5, 160:7, 160:10, 169:25, 188:8, 194:6, 222:10, 222:11, 227:14, 227:22, 240:18, 267:4, 267:13, 269:16, 269:18, 273:17, 278:2, 278:4, 278:7, 278:9, 296:11, 296:25, 298:18, 301:23, 302:10, 303:17</p> <p>five-minute [1] - 160:5</p> <p>fixed [1] - 240:4</p> <p>Floor [1] - 119:5</p> <p>focused [1] - 191:10</p> <p>following [4] - 174:8, 252:23, 318:3, 318:4</p> <p>follows [2] - 121:7, 121:12</p> <p>fool [1] - 128:7</p> <p>football [1] - 277:17</p> <p>force [1] - 120:19</p> <p>forced [1] - 165:23</p> <p>foreman [3] - 170:11, 247:25, 248:4</p> <p>foremen [1] - 248:6</p> <p>forget [3] - 148:24, 154:22, 196:3</p> <p>forgot [2] - 140:14, 196:14</p> <p>form [5] - 120:11, 203:12, 211:3, 211:6, 229:3</p> <p>forth [1] - 317:11</p> <p>forty [7] - 123:11, 123:15, 214:14, 242:24, 272:7, 285:2, 301:23</p> <p>four [13] - 123:9, 135:18, 146:14, 146:17, 191:24, 244:2, 244:20, 269:16, 269:18, 271:8, 296:11</p> <p>fourteen [4] - 215:18, 215:20, 215:22, 248:22</p> <p>fraudulent [1] - 294:5</p> <p>Friday [1] - 302:13</p> <p>friend [7] - 137:25, 290:21, 290:24, 294:6, 294:11, 294:17, 301:9</p> <p>friends [8] - 136:24, 137:3, 211:24, 294:20, 295:6, 304:7, 309:21, 311:10</p> <p>friendship [3] - 265:8, 301:8, 301:9</p> <p>front [1] - 280:14</p> <p>full [4] - 148:7, 177:14, 231:7, 231:11</p> <p>FURTHER [2] - 120:10, 120:15</p> <p>fuse [1] - 256:11</p>	<p>G</p> <p>Galeano [2] - 193:16, 193:18</p> <p>GALEANO [1] - 118:6</p> <p>Galeano's [1] - 193:22</p> <p>games [1] - 311:7</p> <p>garbage [1] - 294:10</p> <p>Garcia [3] - 188:22, 188:24, 189:5</p> <p>GARCIA [1] - 118:5</p> <p>general [1] - 126:2</p> <p>gentleman [1] - 234:10</p> <p>George [2] - 204:21, 204:22</p> <p>given [4] - 170:23, 180:11, 315:13, 317:14</p> <p>God [3] - 149:11, 149:22, 299:13</p> <p>golf [2] - 141:25, 142:16</p> <p>governs [1] - 143:9</p> <p>GPS [46] - 126:13, 126:18, 126:19, 127:8, 127:11, 127:20, 128:2, 128:15, 128:19, 128:22, 129:8, 129:11, 129:14, 129:20, 131:18, 131:25, 132:10, 145:14, 185:9, 185:12, 228:22, 229:16, 229:20, 232:21, 232:24, 233:4, 233:8, 233:23, 234:23, 234:25, 235:5, 235:12, 235:22, 235:24, 237:11, 237:14, 237:19, 255:10, 255:23, 256:15, 256:18, 256:21, 291:14, 292:2, 316:14</p>	<p>grab [1] - 267:18</p> <p>Grand [1] - 141:9</p> <p>grease [14] - 204:5, 204:7, 204:8, 204:10, 204:14, 204:15, 204:17, 204:18, 204:20, 204:25, 205:8, 205:12, 205:24, 206:7</p> <p>great [2] - 223:22, 253:2</p> <p>greet [1] - 137:25</p> <p>ground [1] - 285:13</p> <p>group [10] - 173:18, 183:7, 183:9, 184:2, 188:24, 189:4, 190:15, 242:11, 242:20</p> <p>groups [2] - 173:9, 184:4</p> <p>guaranteeing [1] - 172:10</p> <p>guess [1] - 313:25</p> <p>guys [1] - 194:3</p>	<p>H</p> <p>half [17] - 124:16, 204:9, 204:13, 205:9, 205:10, 205:22, 205:25, 206:3, 206:4, 206:5, 247:18, 265:19, 292:21, 292:25, 293:3, 302:25, 303:2</p> <p>hand [6] - 149:10, 149:23, 233:19, 244:25, 245:2, 317:20</p> <p>handed [1] - 226:9</p> <p>happier [1] - 290:13</p> <p>happiness [2] - 300:5, 300:6</p> <p>happy [4] - 298:24, 299:2, 299:4</p> <p>harassing [1] - 159:2</p> <p>hard [3] - 216:13, 216:17, 307:22</p> <p>hardly [7] - 152:15, 189:7, 189:9, 190:8, 205:20, 209:18, 290:16</p> <p>head [1] - 262:25</p> <p>headache [1] - 193:9</p> <p>heart [8] - 149:13, 149:23, 233:20, 244:25, 245:2, 246:10, 299:18, 299:22</p> <p>held [2] - 118:20, 159:25</p>	<p>HELENE [1] - 118:11</p> <p>Helene [7] - 128:14, 207:22, 208:11, 208:13, 208:15, 267:5, 275:11</p> <p>hell [1] - 144:19</p> <p>hello [2] - 138:2, 188:11</p> <p>help [4] - 172:12, 172:13, 216:21, 217:7</p> <p>helped [1] - 307:16</p> <p>helper [1] - 186:25</p> <p>helps [1] - 300:5</p> <p>Hempstead [5] - 127:3, 240:3, 240:16, 241:15, 246:16</p> <p>HEREBY [1] - 120:4</p> <p>hereby [3] - 120:8, 315:8, 317:9</p> <p>herein [4] - 118:19, 120:6, 121:9, 317:11</p> <p>hereunto [1] - 317:19</p> <p>hesitate [1] - 161:3</p> <p>Highway [2] - 118:15, 119:10</p> <p>himself [1] - 172:6</p> <p>Hispanics [2] - 136:23, 145:11</p> <p>hole [1] - 311:18</p> <p>home [24] - 133:13, 147:15, 147:18, 181:4, 189:8, 198:19, 198:22, 209:21, 230:4, 238:2, 244:17, 252:22, 253:7, 253:14, 255:3, 255:4, 259:22, 263:3, 264:12, 264:14, 271:3, 290:11</p> <p>Hondurans [1] - 295:7</p> <p>honest [2] - 209:5, 266:5</p> <p>hopeful [1] - 306:21</p> <p>Horseblock [1] - 285:10</p> <p>hot [4] - 285:14, 286:4, 286:7, 286:11</p> <p>hour [36] - 142:22, 144:8, 144:14, 150:15, 164:5, 164:8, 164:11, 204:9, 204:13, 205:8, 205:21, 205:25, 206:3, 206:5, 206:19, 222:6, 222:8, 222:13, 222:14, 222:22, 223:4, 223:12,</p>
---	---	---	--	--	---

<p>223:18, 223:25, 224:10, 224:13, 224:21, 225:3, 238:5, 243:23, 265:18, 265:19, 267:5, 278:5, 292:22, 296:16 hour's [1] - 222:16 hour-and-a-half [1] - 265:19 hourly [1] - 292:19 hours [98] - 122:25, 123:3, 123:5, 123:9, 123:11, 123:15, 126:6, 131:20, 132:8, 134:5, 134:10, 134:14, 134:15, 134:17, 134:18, 134:20, 135:8, 151:9, 151:25, 152:8, 163:23, 164:20, 183:5, 183:10, 184:23, 185:9, 192:8, 192:10, 192:15, 192:18, 192:25, 195:8, 196:20, 197:14, 205:9, 205:10, 205:21, 205:22, 205:23, 206:4, 214:14, 223:10, 226:23, 226:24, 227:6, 227:8, 227:13, 227:14, 227:20, 228:21, 233:23, 242:24, 243:12, 243:16, 243:22, 243:23, 244:2, 249:18, 250:12, 250:21, 250:25, 251:7, 252:2, 252:6, 252:10, 261:18, 263:18, 272:7, 272:14, 272:16, 273:7, 273:9, 273:17, 273:19, 281:23, 282:11, 282:24, 283:5, 283:11, 283:12, 285:3, 288:12, 289:7, 292:20, 297:19, 298:21, 301:12, 301:13, 301:23, 302:9, 302:10, 302:11 house [18] - 133:18, 147:9, 147:10, 167:6, 167:8, 185:25, 231:19, 231:21, 231:23, 231:24, 231:25, 247:3, 257:9, 291:11, 291:12, 307:16</p>	<p>hundred [1] - 177:15 hurt [2] - 207:4, 207:7 hurting [3] - 172:6, 207:11, 207:14 hurts [2] - 138:24, 150:2</p> <p style="text-align: center;">I</p> <p>IAN [2] - 119:4, 119:6 ian [5] - 159:13, 175:25, 176:2, 202:23, 226:20 ian [5] - 172:2, 203:21, 228:24, 240:25, 270:14 idea [12] - 124:2, 178:24, 179:25, 191:16, 201:12, 217:25, 227:2, 262:7, 263:20, 271:9, 271:24, 273:12 identification [2] - 279:8, 291:15 identified [2] - 198:2, 266:22 identify [2] - 216:9, 217:7 ignore [1] - 202:4 immigration [6] - 199:14, 199:19, 240:2, 240:12, 240:14, 240:24 impaired [2] - 122:2, 122:7 important [2] - 180:15, 299:12 improper [2] - 161:11, 202:20 improperly [1] - 314:13 IN [1] - 317:19 inability [2] - 155:17, 168:2 income [3] - 289:13, 295:11, 295:15 incorrect [1] - 314:16 incur [1] - 163:13 incurred [1] - 266:8 indicate [4] - 127:12, 131:19, 132:11, 204:24 indicated [5] - 129:15, 129:21, 131:25, 134:2, 228:22 indicating [3] - 128:12, 149:10,</p>	<p>209:25 indicating [2] - 138:24, 234:13 individual [3] - 241:13, 241:20, 241:24 individually [1] - 207:25 information [3] - 154:3, 161:18, 237:25 inside [2] - 267:19, 267:22 inspector [5] - 285:10, 285:11, 285:12, 285:16, 286:11 inspectors [3] - 136:16, 217:12, 217:19 installer [1] - 233:4 instead [1] - 246:8 insurance [1] - 214:22 interaction [1] - 242:7 interest [7] - 158:24, 166:5, 169:8, 241:2, 241:12, 241:18, 257:14 interested [4] - 130:17, 165:19, 172:23, 317:17 interesting [2] - 153:24, 165:8 interpreter [1] - 119:21 interrupted [1] - 159:21 investigated [1] - 236:11 investigator [1] - 218:15 involve [3] - 130:24, 158:11, 168:11 involved [1] - 300:22 irrelevant [3] - 178:16, 178:17, 286:15 IS [3] - 120:4, 120:10, 120:15 IT [3] - 120:4, 120:10, 120:15</p> <p style="text-align: center;">J</p> <p>January [4] - 303:18, 303:19, 305:4, 306:22 JAVIER [1] - 118:6 Javier [8] - 190:16,</p>	<p>190:19, 190:24, 191:2, 191:9, 191:11, 191:19, 295:3 jealous [1] - 232:2 job [86] - 125:18, 125:20, 125:23, 126:10, 126:11, 126:14, 126:15, 127:12, 130:4, 130:5, 131:20, 132:3, 132:23, 132:25, 133:9, 133:18, 136:16, 141:24, 142:22, 142:24, 145:25, 146:3, 146:4, 151:16, 151:21, 151:22, 152:7, 152:13, 152:25, 153:10, 163:10, 166:11, 167:5, 167:6, 170:14, 170:15, 172:7, 193:5, 193:8, 193:10, 194:23, 198:8, 216:16, 217:11, 217:12, 217:24, 218:4, 228:7, 228:18, 232:9, 235:7, 242:12, 244:7, 245:12, 246:19, 247:2, 247:3, 249:14, 259:19, 261:8, 277:18, 277:25, 278:14, 283:15, 283:22, 284:2, 284:6, 284:14, 284:16, 284:20, 284:21, 285:23, 286:13, 297:11, 299:14, 299:19, 300:7, 300:8, 307:19, 309:11, 309:13 jobs [24] - 132:17, 146:7, 146:8, 146:10, 146:11, 164:16, 213:12, 213:17, 213:19, 216:25, 217:7, 218:7, 218:8, 244:4, 244:11, 249:25, 273:13, 276:21, 278:18, 281:7 JOHN [1] - 118:11 joined [4] - 214:6, 214:8, 214:10, 222:20 Jose [6] - 189:10, 189:12, 189:15, 196:5, 197:5, 197:8 JOSE [2] - 118:5, 118:7 Juan [2] - 197:16, 197:18</p>	<p>JUAN [1] - 118:7 Judge [7] - 159:5, 161:24, 165:23, 165:24, 166:8, 172:9 July [3] - 280:23, 281:2, 282:2 June [3] - 200:22, 201:19</p> <p style="text-align: center;">K</p> <p>keep [3] - 125:22, 126:5, 198:21 kept [2] - 252:14, 253:21 Kevin [3] - 193:16, 193:18, 193:22 KEVIN [1] - 118:6 kind [3] - 128:7, 147:20, 288:23 knows [8] - 128:9, 128:24, 129:5, 138:20, 145:8, 245:4, 245:7, 277:24</p> <p style="text-align: center;">L</p> <p>laborer [1] - 220:22 lack [2] - 305:11, 306:13 last [48] - 125:14, 127:2, 128:6, 128:11, 132:16, 137:22, 138:9, 138:24, 139:13, 141:3, 145:24, 146:13, 152:15, 176:11, 177:13, 178:6, 178:8, 181:2, 181:14, 181:16, 199:7, 199:21, 200:16, 200:18, 200:25, 204:23, 210:16, 211:14, 212:9, 228:25, 233:5, 238:23, 239:13, 244:13, 257:24, 271:5, 276:22, 294:14, 294:18, 295:4, 295:7, 295:10, 297:4, 299:8, 300:2, 303:16, 304:5, 310:13 late [8] - 144:10, 144:12, 153:17, 154:20, 184:19, 184:20, 231:5, 266:2 Lauren [4] - 175:25, 176:3, 178:4, 199:20 LAW [1] - 119:4</p>
--	--	--	--	---

<p>law [5] - 134:19, 134:23, 142:21, 235:24, 296:22</p> <p>laws [4] - 135:10, 143:7, 248:8, 248:11</p> <p>lawsuit [31] - 150:17, 154:8, 155:9, 155:13, 168:12, 206:15, 226:22, 252:17, 252:19, 253:8, 253:18, 253:24, 263:25, 264:4, 266:20, 270:18, 271:20, 272:21, 309:25, 310:4, 310:5, 310:11, 310:12, 310:15, 310:16, 310:22, 310:25, 311:11, 311:13, 311:16, 312:3</p> <p>lawyer [4] - 245:18, 245:23, 245:24, 281:13</p> <p>lawyers [2] - 245:21, 281:10</p> <p>lazy [1] - 307:11</p> <p>leader [1] - 271:14</p> <p>leadership [1] - 274:14</p> <p>leading [1] - 202:22</p> <p>least [4] - 123:9, 205:6, 293:4, 302:10</p> <p>leave [11] - 127:7, 147:9, 147:17, 147:20, 163:20, 187:22, 189:8, 193:5, 229:13, 255:4, 267:18</p> <p>leaving [2] - 287:6, 298:6</p> <p>left [13] - 126:15, 133:18, 141:7, 167:7, 201:7, 201:17, 201:21, 230:4, 252:22, 258:25, 297:2, 299:2, 309:17</p> <p>legal [5] - 156:22, 175:12, 266:9, 266:14, 266:18</p> <p>lend [3] - 266:3, 300:17</p> <p>lending [1] - 300:14</p> <p>lent [3] - 257:24, 264:5, 266:10</p> <p>Lerly [2] - 195:2, 195:5</p> <p>LERLY [1] - 118:6</p> <p>less [21] - 124:8, 163:25, 164:12, 169:4, 175:11, 183:15, 193:25,</p>	<p>214:11, 219:20, 221:12, 221:13, 228:21, 283:16, 283:18, 296:12, 297:5, 298:15, 298:16, 298:21, 298:22</p> <p>letter [1] - 309:19</p> <p>letters [1] - 215:9</p> <p>letting [3] - 127:20, 166:16, 171:10</p> <p>liar [8] - 166:6, 166:7, 166:25, 167:16, 167:20, 168:4, 233:10, 236:12</p> <p>lie [4] - 247:6, 247:9, 251:19, 305:16</p> <p>LIE [1] - 144:5</p> <p>lied [6] - 168:19, 181:17, 181:25, 236:25, 305:13, 305:18</p> <p>life [1] - 244:10</p> <p>lighter [1] - 303:16</p> <p>line [1] - 161:24</p> <p>LINE [1] - 318:5</p> <p>list [5] - 134:2, 170:22, 170:23, 174:7, 302:9</p> <p>listen [3] - 144:22, 228:14, 235:7</p> <p>listening [2] - 122:3, 199:5</p> <p>litigation [2] - 209:8, 269:12</p> <p>live [1] - 300:5</p> <p>lived [1] - 139:9</p> <p>living [1] - 209:21</p> <p>loan [2] - 256:24, 301:14</p> <p>loaned [1] - 210:3</p> <p>locally [2] - 127:2, 163:17</p> <p>logic [1] - 298:16</p> <p>longest [1] - 267:17</p> <p>look [14] - 126:25, 128:19, 153:8, 166:25, 167:16, 167:19, 168:4, 214:24, 245:15, 245:16, 263:5, 266:25, 291:23, 292:2</p> <p>looking [7] - 152:19, 153:3, 153:8, 154:8, 163:5, 169:22, 309:16</p> <p>lose [4] - 262:12, 262:16, 263:6, 263:10</p> <p>loses [1] - 145:12</p> <p>losing [1] - 297:10</p> <p>lost [2] - 297:22,</p>	<p>298:3</p> <p>LOUIS [1] - 118:11</p> <p>Louis [66] - 119:22, 150:15, 150:20, 151:18, 151:23, 154:14, 158:11, 171:21, 174:9, 176:9, 176:22, 179:14, 181:6, 183:25, 185:17, 188:25, 201:15, 206:21, 206:25, 207:15, 207:18, 207:21, 207:24, 208:13, 210:8, 213:8, 217:21, 225:13, 231:13, 233:6, 244:8, 252:20, 252:25, 254:18, 259:13, 260:25, 261:4, 263:24, 271:15, 273:15, 275:4, 275:7, 277:9, 277:24, 290:20, 290:24, 291:6, 294:16, 296:11, 296:14, 296:15, 296:24, 299:6, 299:14, 299:20, 300:24, 301:2, 301:13, 307:25, 308:7, 308:14, 308:20, 308:24, 309:4, 311:23</p> <p>Louis' [1] - 249:14</p> <p>loyal [1] - 266:5</p> <p>luck [1] - 299:13</p> <p>Lunary [2] - 141:4, 141:16</p> <p>lunch [6] - 152:15, 152:17, 220:9, 220:11, 278:5, 278:6</p> <p>lying [12] - 132:2, 134:11, 174:4, 174:5, 182:6, 182:12, 229:16, 233:14, 233:15, 234:16, 284:17, 284:18</p>	<p>249:11, 259:4, 306:22</p> <p>MARCUS [1] - 118:7</p> <p>Marcus [2] - 196:12, 196:19</p> <p>Margarita [1] - 119:21</p> <p>mark [2] - 279:4, 289:15</p> <p>marked [5] - 278:22, 279:7, 291:14, 291:19, 292:9</p> <p>Marketing [1] - 139:16</p> <p>marriage [1] - 317:17</p> <p>Martinez [3] - 189:10, 189:12, 196:5</p> <p>MARTINEZ [1] - 118:5</p> <p>Martinez's [1] - 189:15</p> <p>match [1] - 288:4</p> <p>material [1] - 278:3</p> <p>matter [3] - 123:15, 123:17, 317:18</p> <p>Maynor [6] - 187:19, 187:22, 195:24, 196:2, 196:10, 271:6</p> <p>MAYNOR [1] - 118:5</p> <p>mean [7] - 146:3, 149:7, 173:23, 226:13, 245:20, 253:17, 258:23</p> <p>means [2] - 133:6, 291:25</p> <p>meant [1] - 258:4</p> <p>mechanic [3] - 186:25, 204:18, 204:19</p> <p>Medicaid [1] - 215:8</p> <p>meet [5] - 218:14, 218:18, 219:2, 219:4, 219:9</p> <p>member [2] - 174:20, 174:22</p> <p>members [1] - 287:14</p> <p>memory [1] - 216:24</p> <p>Mendez [13] - 121:17, 121:22, 130:7, 135:19, 150:6, 155:8, 209:10, 220:13, 239:14, 274:6, 287:21, 292:10, 316:5</p> <p>MENDEZ [5] - 118:5, 118:19, 315:8, 315:16, 317:10</p> <p>Mendez's [1] - 235:6</p> <p>mention [2] - 200:21, 276:7</p>	<p>mentioned [6] - 118:21, 195:20, 200:19, 205:19, 275:25, 276:5</p> <p>met [1] - 195:25</p> <p>MICHELLE [3] - 118:22, 317:7, 317:24</p> <p>might [1] - 250:17</p> <p>miles [1] - 267:4</p> <p>million [1] - 266:3</p> <p>mind [1] - 207:11</p> <p>mine [9] - 136:24, 183:8, 232:11, 253:16, 255:9, 278:24, 294:7, 312:9</p> <p>minimum [7] - 122:24, 134:15, 134:16, 227:12, 227:14, 227:17, 243:22</p> <p>minute [7] - 139:3, 152:8, 160:5, 160:9, 169:9, 208:25, 277:21</p> <p>minutes [23] - 133:20, 133:25, 144:10, 144:11, 144:14, 152:14, 153:21, 154:20, 160:7, 160:10, 163:16, 163:17, 163:18, 267:14, 277:20, 277:23, 278:4, 278:8, 278:9, 284:25, 285:2, 293:14</p> <p>mischaracterizing [1] - 239:9</p> <p>misguided [3] - 241:20, 241:23, 242:2</p> <p>mislead [1] - 242:3</p> <p>miss [1] - 228:3</p> <p>missed [2] - 265:18, 298:3</p> <p>mistake [1] - 135:21</p> <p>mistaken [4] - 124:15, 214:9, 276:23, 278:17</p> <p>Monday [4] - 252:24, 288:16, 288:17, 302:13</p> <p>money [45] - 124:4, 132:21, 132:22, 148:16, 148:23, 210:9, 210:11, 210:14, 210:20, 210:23, 222:19, 245:4, 245:6, 245:9, 245:22, 246:11, 246:21, 247:14, 257:11, 257:24, 262:12, 262:15,</p>
--	--	--	--	---

M

<p>263:15, 264:4, 264:7, 264:11, 264:17, 266:17, 290:7, 293:7, 296:8, 296:14, 296:17, 297:3, 297:20, 297:22, 298:6, 298:8, 298:9, 298:20, 299:11, 300:4, 300:15, 300:17, 304:8 month^[14] - 201:9, 211:13, 211:19, 214:17, 215:24, 227:15, 230:19, 251:24, 253:21, 272:8, 286:9, 287:12, 303:15, 303:16 month's^[1] - 263:10 monthly^[3] - 215:15, 215:16, 216:2 months^[16] - 188:8, 227:16, 230:6, 230:9, 230:19, 230:20, 237:22, 251:3, 254:5, 269:16, 269:18, 272:5, 272:9, 308:18, 308:19 months'^[1] - 284:11 morning^[20] - 125:10, 133:18, 133:24, 170:20, 171:7, 171:24, 173:13, 174:2, 184:11, 184:15, 187:17, 188:15, 192:11, 197:15, 198:5, 230:12, 245:19, 278:15, 278:19, 290:20 most^[34] - 125:13, 125:14, 147:16, 149:17, 151:13, 155:24, 164:12, 165:3, 167:3, 167:4, 167:8, 168:14, 175:3, 185:4, 189:13, 190:13, 194:17, 198:2, 205:10, 216:8, 217:11, 230:21, 230:24, 230:25, 231:12, 242:21, 243:3, 243:21, 252:8, 257:4, 282:4, 295:8, 303:11, 303:19 mostly^[3] - 184:23, 191:14, 243:18 mother^[3] - 143:19, 149:12, 201:15 mouth^[1] - 167:19 MR^[322] - 121:14,</p>	<p>123:6, 123:23, 124:23, 125:11, 126:16, 127:14, 128:3, 128:20, 129:4, 129:9, 129:12, 129:17, 129:23, 130:19, 131:22, 132:4, 132:13, 133:3, 134:6, 134:12, 136:20, 137:15, 137:19, 143:4, 143:11, 143:17, 148:17, 150:3, 150:12, 151:17, 152:4, 152:21, 153:5, 153:11, 154:5, 155:19, 155:21, 156:11, 157:4, 158:2, 158:6, 158:19, 158:25, 159:8, 159:10, 159:14, 159:16, 159:23, 160:13, 160:21, 160:24, 161:4, 161:7, 161:11, 161:14, 161:16, 161:17, 161:22, 161:25, 162:2, 162:3, 162:5, 162:8, 162:9, 162:13, 162:15, 162:18, 162:24, 165:11, 165:16, 166:2, 166:8, 166:13, 166:17, 167:12, 167:21, 168:3, 168:5, 168:21, 168:24, 169:2, 169:5, 169:10, 169:17, 169:24, 170:16, 171:16, 172:2, 172:4, 172:5, 172:18, 173:22, 174:18, 176:4, 176:16, 176:20, 177:25, 178:12, 178:14, 178:16, 178:17, 180:5, 181:19, 182:8, 182:13, 183:16, 184:9, 184:22, 185:11, 187:13, 192:17, 193:12, 198:4, 198:9, 199:3, 199:17, 199:20, 199:23, 199:25, 200:4, 200:10, 200:14, 201:24, 202:3, 202:5, 202:8, 202:10, 202:13, 202:15, 202:17, 202:19, 202:23, 202:25, 203:3, 203:5, 203:7, 203:8, 203:10,</p>	<p>203:13, 203:15, 203:18, 203:21, 203:23, 203:25, 204:3, 205:15, 206:17, 207:10, 207:12, 208:19, 208:21, 208:23, 209:2, 209:17, 209:22, 210:4, 210:15, 212:4, 212:14, 212:23, 214:12, 216:6, 216:19, 217:4, 220:9, 220:17, 221:9, 227:4, 227:9, 227:24, 228:8, 228:23, 228:24, 229:4, 229:6, 229:17, 232:3, 232:14, 233:16, 233:25, 234:17, 234:21, 234:22, 234:24, 235:16, 235:21, 235:25, 236:7, 236:13, 236:22, 237:2, 237:6, 237:12, 237:17, 239:4, 239:8, 239:16, 239:19, 240:10, 240:13, 240:21, 240:23, 240:25, 241:4, 241:6, 241:8, 241:11, 241:22, 241:23, 241:25, 242:3, 242:5, 242:22, 243:5, 244:23, 245:8, 245:10, 245:13, 245:16, 245:20, 246:3, 246:8, 246:12, 246:22, 247:4, 247:8, 247:13, 247:15, 247:20, 250:14, 251:8, 252:3, 253:9, 253:19, 254:7, 255:7, 255:14, 255:25, 256:9, 257:2, 258:22, 260:6, 261:12, 261:17, 262:3, 262:8, 262:21, 263:8, 263:22, 264:9, 265:5, 265:22, 266:6, 266:11, 267:16, 269:15, 270:12, 270:14, 270:19, 271:13, 272:2, 272:11, 272:22, 272:24, 273:4, 273:23, 273:24, 275:18, 276:2, 276:12, 279:2, 279:4, 281:15, 281:21, 282:9, 283:5, 283:9,</p>	<p>284:7, 286:21, 287:18, 288:7, 288:25, 289:15, 289:17, 290:15, 292:4, 292:8, 292:12, 293:10, 293:15, 293:19, 297:12, 297:25, 298:14, 301:6, 302:4, 302:17, 305:14, 306:15, 307:9, 308:11, 309:14, 310:17, 311:2, 311:8, 311:19, 312:12, 312:23, 313:9, 313:11, 313:12, 313:15, 313:17, 313:19, 313:20, 313:23, 313:25, 314:4, 314:9, 314:11, 314:16 must^[1] - 156:5</p>	<p>137:17, 139:16, 182:17, 182:21, 182:23, 183:6, 183:12, 183:18, 184:3, 184:5, 184:13, 190:20 never^[49] - 122:16, 132:21, 132:22, 176:11, 194:22, 201:21, 205:18, 206:11, 207:4, 211:9, 214:22, 216:25, 222:19, 233:9, 236:14, 238:21, 239:3, 243:6, 243:7, 243:8, 243:14, 248:17, 248:23, 251:2, 252:14, 254:15, 255:8, 257:10, 260:10, 261:2, 261:10, 261:11, 267:2, 267:25, 268:5, 275:25, 278:6, 279:17, 281:3, 281:18, 281:19, 283:14, 287:11, 289:5, 289:21, 293:17, 307:20, 307:25 nevertheless^[1] - 294:6 new^[2] - 151:18, 300:8 NEW^[3] - 118:2, 315:4, 317:4 New^[10] - 118:16, 118:23, 119:5, 119:10, 121:4, 121:10, 121:20, 315:25, 317:9 next^[8] - 150:15, 166:23, 174:10, 204:3, 259:17, 259:20, 284:16, 285:19 night^[4] - 124:18, 144:5, 188:12, 192:13 nine^[6] - 148:6, 227:16, 272:5, 282:24, 283:10, 283:12 nobody^[3] - 193:11, 202:23, 290:3 NOE^[1] - 118:6 Noe^[3] - 195:2, 195:5, 196:3 normal^[2] - 194:2, 259:15 normally^[3] -</p>
N				
<p>name^[35] - 121:15, 136:18, 139:14, 139:18, 139:22, 140:15, 141:4, 141:9, 142:10, 181:6, 193:21, 196:4, 204:21, 204:23, 207:15, 218:11, 274:13, 275:20, 279:19, 279:24, 280:12, 282:15, 285:20, 286:25, 290:24, 291:8, 294:12, 294:14, 294:18, 295:5, 295:8, 295:9, 295:10, 305:24 names^[8] - 137:6, 141:14, 182:20, 182:24, 183:3, 195:17, 195:21, 276:10 NASSAU^[1] - 317:5 necessary^[1] - 145:24 need^[10] - 131:7, 138:5, 157:24, 228:14, 294:9, 300:21, 308:2, 308:5, 309:9, 309:10 needed^[4] - 132:16, 307:23, 308:18, 309:11 needs^[3] - 138:15, 156:2, 172:16 NELSON^[1] - 118:4 Nelson^[13] - 137:10,</p>				

<p>285:19, 285:20, 286:24 pages [7] - 177:15, 206:19, 268:9, 268:10, 268:12, 268:14, 268:17 PAGOADA [1] - 118:5 Pagoada [1] - 190:5 Pagoada's [1] - 190:12 paid [89] - 122:16, 123:4, 123:11, 124:17, 128:13, 132:8, 135:8, 136:6, 136:9, 138:12, 143:2, 149:2, 149:14, 149:19, 149:24, 150:7, 150:10, 150:24, 151:5, 151:6, 152:19, 152:24, 153:3, 153:9, 154:8, 175:16, 176:7, 176:11, 176:14, 176:18, 182:4, 204:10, 204:14, 204:25, 205:12, 205:19, 205:21, 206:7, 210:2, 210:9, 210:18, 212:3, 212:6, 212:7, 212:8, 212:11, 212:13, 212:21, 213:5, 213:13, 216:4, 216:11, 220:3, 225:3, 226:21, 227:3, 238:18, 239:3, 242:21, 242:23, 243:3, 243:8, 243:14, 245:4, 245:5, 245:9, 246:20, 247:10, 247:17, 250:3, 250:6, 256:23, 261:24, 264:13, 265:21, 268:2, 268:5, 275:23, 289:5, 290:8, 290:12, 290:23, 291:4, 296:13, 296:15, 296:16, 296:24, 297:14 paper [14] - 134:2, 140:7, 178:21, 178:23, 179:15, 245:18, 258:4, 262:4, 265:9, 267:2, 267:18, 278:24, 280:9, 283:3 papers [25] - 132:6, 178:22, 178:25, 180:15, 199:15, 225:18, 225:20, 226:4, 226:16,</p>	<p>226:17, 240:4, 244:24, 253:12, 253:15, 253:17, 253:20, 254:9, 258:2, 258:6, 277:2, 284:10, 284:13, 311:14, 311:16 paperwork [1] - 280:21 Park [1] - 142:16 parking [2] - 153:20, 284:20 part [4] - 151:25, 154:8, 188:19, 305:24 particular [1] - 158:18 parties [2] - 120:6, 317:16 partner [1] - 141:5 passed [1] - 153:15 passengers [1] - 146:2 passport [4] - 199:9, 199:10, 313:2, 313:5 passports [1] - 200:5 past [2] - 141:13, 281:6 patch [2] - 284:21 pausing [1] - 208:24 paving [23] - 183:17, 184:3, 187:15, 188:20, 188:21, 189:3, 189:17, 189:18, 189:20, 190:14, 190:15, 192:7, 192:9, 192:24, 194:3, 194:9, 195:6, 195:10, 195:18, 196:17, 197:9, 197:20, 259:15 Paving [13] - 139:25, 140:4, 140:12, 140:21, 141:20, 207:20, 248:25, 258:25, 274:8, 274:16, 274:20, 274:25, 275:6 PAVING [1] - 118:10 pay [66] - 122:25, 123:16, 124:6, 124:11, 124:19, 129:13, 134:16, 134:18, 134:20, 135:16, 136:12, 136:14, 136:18, 136:19, 149:4, 150:16, 154:24, 154:25, 170:12, 176:2, 176:19, 176:25, 181:9,</p>	<p>181:17, 181:23, 182:6, 183:10, 204:13, 205:7, 206:15, 207:17, 209:16, 211:2, 211:11, 212:2, 212:16, 213:9, 213:10, 214:11, 214:16, 214:17, 214:18, 214:20, 215:5, 215:14, 215:16, 215:18, 215:22, 215:25, 218:13, 220:21, 220:22, 222:6, 223:8, 236:9, 238:19, 242:25, 243:9, 246:6, 246:11, 246:12, 247:10, 247:18, 249:16, 257:25, 265:25, 289:4, 290:22, 291:6, 296:12, 296:22, 297:5, 297:14, 298:4, 298:17, 298:18, 298:19, 298:21, 301:25, 302:11, 302:24, 302:25, 303:2, 312:10 paycheck [3] - 215:13, 288:24, 289:6 paychecks [2] - 204:24, 214:25 paying [13] - 136:22, 136:25, 137:2, 150:17, 151:20, 205:21, 213:19, 213:21, 229:23, 256:6, 297:5, 298:15, 303:6 payment [1] - 211:5 payments [4] - 214:19, 246:13, 289:24, 290:4 pays [1] - 290:6 pen [3] - 260:20, 261:21, 261:22 pending [2] - 159:17, 266:24 penny [1] - 210:2 people [22] - 128:16, 136:22, 136:24, 145:10, 150:7, 150:10, 152:18, 192:15, 194:7, 194:8, 195:17, 198:2, 207:4, 207:11, 241:16, 246:6, 247:2, 256:5, 264:21, 265:17, 292:15, 292:21</p>	<p>people's [1] - 256:6 per [8] - 163:12, 206:2, 206:4, 206:5, 222:6, 222:13, 222:14 Perez [1] - 196:12 PEREZ [1] - 118:7 Perez's [1] - 196:20 period [10] - 140:3, 140:4, 197:21, 197:22, 201:25, 202:21, 205:4, 205:5, 253:21, 259:10 periods [1] - 132:24 perjury [1] - 156:20 permission [1] - 313:16 permit [1] - 314:9 permitted [1] - 131:14 Perry [1] - 121:20 person [19] - 133:14, 133:16, 137:13, 137:18, 145:7, 145:11, 145:12, 192:23, 194:13, 197:2, 197:3, 233:13, 269:3, 269:6, 277:14, 283:3, 299:9, 307:18, 308:6 person's [2] - 269:3, 276:18 personal [1] - 228:3 persons [2] - 191:14, 298:4 pertaining [1] - 200:4 pertains [1] - 175:3 phone [3] - 248:24, 273:6, 307:25 pick [16] - 126:20, 126:21, 126:22, 127:17, 130:5, 130:6, 147:3, 147:11, 147:14, 148:7, 170:12, 171:24, 173:18, 234:8, 234:20, 300:10 pick-up [10] - 126:20, 126:21, 126:22, 127:17, 130:5, 130:6, 148:7, 170:12, 234:8, 234:20 picks [2] - 148:5, 148:6 Pictures [2] - 291:14, 316:14 pictures [1] - 291:23 Pioneer [1] - 299:9 place [7] - 118:21, 199:19, 244:22,</p>	<p>265:16, 296:16, 307:18, 308:6 places [1] - 309:16 plaintiffs [2] - 148:15, 148:20 Plaintiffs [3] - 118:8, 118:19, 119:4 Plaintiffs' [2] - 278:22, 291:19 plant [1] - 230:17 plate [1] - 148:4 play [7] - 277:17, 277:19, 277:23, 278:10, 293:12, 293:18, 293:24 played [1] - 293:13 playing [2] - 278:11, 311:6 PLLC [1] - 119:4 plus [2] - 292:16, 302:10 point [4] - 168:23, 171:16, 208:25, 290:9 police [3] - 236:5, 236:10, 236:14 policy [2] - 135:7, 142:19 poor [3] - 241:20, 241:24, 265:23 por [1] - 146:15 portion [1] - 289:16 pose [1] - 158:4 posed [2] - 155:18, 156:6 position [3] - 161:23, 175:16, 301:11 possible [5] - 172:14, 210:16, 224:3, 303:24, 303:25 possibly [1] - 202:9 postings [1] - 171:5 pracelis [1] - 121:17 Pracelis [1] - 316:5 PRACELIS [5] - 118:5, 118:19, 315:8, 315:16, 317:10 prefer [2] - 242:4, 300:2 prepare [2] - 174:9, 195:15 prepared [2] - 169:14, 169:16 preparing [1] - 162:11 present [1] - 220:5 PRESENT [1] - 119:20 presently [1] - 220:21 president [2] -</p>
--	--	---	--	---

<p>233:17, 265:24 pretty [4] - 136:3, 214:18, 276:15, 308:20 prevailing [31] - 213:5, 213:10, 213:12, 213:16, 213:17, 213:20, 213:21, 216:5, 216:11, 217:2, 217:9, 217:13, 217:20, 217:23, 218:2, 218:4, 218:6, 219:16, 220:3, 220:14, 220:15, 221:8, 221:15, 248:7, 249:24, 250:3, 250:6, 250:9, 268:15, 296:13, 297:6 preventing [1] - 314:13 previous [2] - 225:24, 225:25 previously [4] - 266:22, 278:22, 312:14, 312:18 price [1] - 142:9 private [1] - 217:22 privilege [2] - 161:19, 161:21 problem [10] - 200:20, 246:3, 255:3, 261:23, 296:21, 304:10, 308:22, 309:2, 310:7 problems [6] - 138:22, 141:4, 141:6, 286:16, 290:23, 308:21 proceed [1] - 169:14 process [1] - 310:2 produced [2] - 200:11, 234:25 projects [2] - 216:10, 276:11 pronounce [1] - 141:18 proof [2] - 210:13, 237:20 proper [2] - 155:4, 155:7 property [1] - 255:6 protective [4] - 199:18, 199:24, 200:6, 240:11 provide [12] - 130:11, 135:23, 137:9, 157:10, 157:20, 158:21, 199:8, 199:22, 205:17, 232:7,</p>	<p>312:17, 312:19 provided [3] - 232:6, 257:21, 312:13 providing [3] - 312:25, 313:2, 313:6 Public [5] - 118:22, 121:3, 121:10, 315:25, 317:8 pull [1] - 277:22 purchase [1] - 264:12 purpose [1] - 202:13 purposes [2] - 162:9, 162:10 pursuant [1] - 118:20 put [31] - 133:22, 149:9, 149:23, 164:17, 164:19, 229:12, 244:25, 258:9, 260:21, 260:22, 261:19, 261:20, 262:5, 262:6, 262:10, 268:3, 283:19, 288:3, 288:5, 294:10, 305:8, 305:10, 305:15, 305:23, 306:6, 306:10, 306:11, 306:16, 306:17, 306:19, 312:10 putting [2] - 245:2, 305:16</p>	<p>QUINTANILLA [2] - 118:4, 118:6 Quintanilla [15] - 137:10, 137:17, 150:23, 151:5, 182:17, 182:21, 182:23, 183:6, 183:12, 183:19, 184:6, 184:13, 190:16, 190:19, 191:10 Quintanilla's [1] - 190:20 QUINTEROS [1] - 118:7 Quinteros [2] - 197:16, 197:18 quit [2] - 229:24, 229:25 quite [1] - 137:24</p>	<p>168:22, 183:8, 190:9, 191:4, 197:23, 215:6, 226:25, 227:19, 250:16, 256:13, 262:19, 268:2, 268:5, 270:25, 289:4, 290:5, 292:5, 310:4 REASON [10] - 318:7, 318:9, 318:11, 318:13, 318:15, 318:17, 318:19, 318:21, 318:23, 318:25 reason [11] - 121:24, 122:5, 122:15, 128:9, 145:15, 158:17, 162:12, 229:21, 255:19, 305:7, 305:11 reasons [1] - 318:4 recalled [1] - 312:16 receive [11] - 123:22, 174:23, 211:2, 211:5, 211:8, 213:16, 217:2, 217:8, 248:7, 294:3, 312:15 received [13] - 142:3, 142:4, 180:25, 181:3, 211:9, 239:5, 239:6, 239:12, 268:16, 289:10, 289:13, 289:19, 289:24 recent [1] - 149:25 recess [6] - 150:4, 160:3, 169:12, 220:11, 274:4, 287:19 record [25] - 121:15, 121:18, 126:25, 159:24, 160:2, 162:10, 166:14, 178:13, 185:9, 199:18, 200:11, 202:6, 202:12, 208:23, 209:6, 234:3, 234:7, 234:24, 241:10, 257:12, 312:24, 314:12, 315:12, 315:13, 317:13 records [9] - 128:19, 129:15, 129:21, 234:3, 234:23, 235:2, 235:5, 235:12, 237:19 red [2] - 260:20, 261:22 referring [6] - 146:8, 173:17, 222:5, 226:11, 240:8, 267:9 refusal [1] - 155:23 refuse [1] - 309:8 refused [3] - 260:5,</p>	<p>309:5, 309:7 regard [1] - 216:25 regarding [2] - 161:10, 199:19 regular [5] - 197:10, 239:6, 239:12, 247:18, 302:25 regularly [1] - 136:25 related [2] - 202:21, 317:15 relating [1] - 258:13 relationship [2] - 262:13, 262:17 relevant [1] - 153:25 remain [8] - 166:10, 166:12, 166:18, 203:4, 203:6, 203:11, 203:22, 204:2 remember [51] - 125:24, 126:2, 135:19, 142:12, 142:13, 143:24, 144:4, 144:15, 144:20, 144:21, 149:15, 150:8, 163:2, 165:13, 166:19, 174:16, 176:6, 176:10, 176:14, 176:18, 177:3, 180:24, 181:11, 181:12, 181:13, 181:22, 182:3, 182:4, 182:9, 182:10, 201:5, 216:17, 218:23, 218:24, 224:16, 230:2, 239:2, 239:11, 243:10, 244:12, 244:15, 249:10, 249:11, 257:8, 259:3, 265:18, 267:11, 276:10, 276:22, 277:9, 278:18 remembered [1] - 204:13 remembers [1] - 273:21 Renato [4] - 195:23, 271:17, 289:25, 294:23 renewed [2] - 129:23, 221:9 rent [1] - 150:9 repaid [1] - 210:14 repair [1] - 233:4 repay [4] - 265:4, 301:5, 301:14, 303:4 repeat [9] - 129:19, 129:25, 136:2, 162:18, 164:18, 167:3, 193:24,</p>
R				
<p>Raffi [4] - 140:18, 141:4, 141:11, 141:16 rain [5] - 228:2, 231:9, 250:17, 252:14, 303:17 rained [2] - 228:4, 252:11 rains [1] - 227:21 raise [2] - 222:19, 223:21 raising [1] - 155:3 rakes [1] - 148:5 ramifications [1] - 156:22 range [2] - 163:15, 192:15 rate [9] - 220:16, 221:8, 221:16, 247:18, 249:25, 268:15, 292:11, 292:19, 296:13 rates [3] - 248:7, 249:16, 250:4 read [14] - 175:2, 175:3, 175:5, 175:8, 175:11, 175:12, 175:15, 175:20, 181:5, 229:10, 241:9, 254:2, 315:9 ready [2] - 173:5, 173:12 real [1] - 216:13 realize [1] - 149:11 realized [1] - 196:2 really [22] - 136:11, 142:18, 164:2,</p>				
Q				
<p>questioned [1] - 220:6 questions [43] - 121:5, 130:11, 130:21, 130:23, 131:8, 131:15, 135:2, 135:22, 154:7, 155:13, 155:17, 155:24, 156:5, 157:2, 157:15, 158:3, 158:15, 158:21, 158:22, 163:2, 165:10, 165:21, 166:16, 167:11, 167:23, 168:8, 171:13, 172:8, 172:15, 172:21, 179:19, 203:16, 208:22, 219:7, 219:23, 220:2, 235:8, 235:10, 240:3, 240:23, 271:23 quickly [1] - 172:13 quiet [1] - 138:20</p>				

<p>218:17, 287:12 repeated [1] - 233:5 report [6] - 228:17, 245:10, 249:18, 289:12, 304:16, 304:17 reported [6] - 133:11, 228:17, 228:21, 229:14, 245:12, 306:3 reporter [1] - 229:11 Reporter [1] - 317:7 reports [5] - 127:9, 127:11, 131:19, 131:25, 132:10 representation [1] - 199:25 representations [1] - 209:5 representative [2] - 282:6, 283:7 represented [2] - 199:8, 312:18 requested [2] - 229:9, 312:14 require [1] - 202:10 required [3] - 287:21, 287:23, 313:5 reserved [1] - 120:12 respect [9] - 144:25, 145:4, 145:7, 145:14, 145:16, 232:15, 232:16, 232:19, 232:24 respectful [1] - 144:24 respective [1] - 120:6 respond [3] - 166:16, 180:6, 266:20 responding [4] - 165:12, 166:14, 172:4, 207:10 Response [1] - 135:15 response [3] - 125:3, 171:11, 202:11 responsibility [2] - 130:18, 131:5 rest [5] - 191:12, 193:8, 193:25, 274:24, 301:23 restrain [1] - 168:7 restroom [1] - 273:24 result [6] - 155:12, 226:22, 262:13, 262:16, 266:9, 298:12 retainer [1] - 179:16 rethink [1] - 161:23</p>	<p>return [6] - 265:10, 266:10, 299:7, 299:21, 299:23 returned [2] - 146:23, 222:18 returns [5] - 289:13, 295:11, 295:15, 313:3, 313:4 reveal [1] - 161:5 revealing [1] - 161:18 review [3] - 235:12, 235:15, 235:19 ringleader [1] - 271:12 ripped [1] - 294:9 risk [1] - 161:2 Rivera [2] - 192:3, 192:5 RIVERA [1] - 118:6 Riverhead [1] - 127:3 Road [1] - 217:18 robbed [1] - 133:9 robbing [2] - 133:8, 133:14 Rodriguez [2] - 195:3, 195:5 RODRIGUEZ [1] - 118:6 role [1] - 203:10 roller [1] - 195:7 Ronald [2] - 294:12, 294:13 Ronald's [1] - 295:4 roughly [1] - 258:17 rule [1] - 151:18 rules [4] - 143:15, 143:16, 170:7, 186:17 Rules [1] - 314:15 run [2] - 160:25, 208:14 runs [1] - 275:10</p>	<p>302:16, 303:7, 303:10, 303:11 Saturdays [13] - 124:17, 210:25, 257:25, 265:14, 301:16, 301:22, 301:25, 302:3, 303:3, 303:6, 303:13, 303:18, 303:22 SAUL [1] - 119:11 saul [1] - 203:23 saw [5] - 171:9, 181:5, 232:6, 279:17, 299:6 scant [1] - 235:2 schedule [18] - 164:20, 171:23, 173:5, 173:8, 183:13, 184:8, 184:14, 186:24, 187:2, 187:6, 188:13, 189:16, 189:19, 190:12, 193:11, 193:23, 197:25, 198:13 school [4] - 143:20, 143:21, 175:10, 276:24 schools [1] - 218:7 sealing [1] - 120:7 season [1] - 231:6 second [4] - 146:23, 149:13, 196:2, 256:17 Security [1] - 136:17 see [29] - 126:25, 127:8, 135:7, 135:9, 170:22, 171:5, 175:17, 184:11, 187:16, 201:6, 201:7, 201:13, 233:19, 244:18, 251:12, 258:8, 260:21, 260:25, 267:24, 273:20, 279:19, 279:24, 280:12, 280:22, 282:15, 285:20, 286:25, 289:7, 291:24 seem [1] - 166:6 semana [1] - 146:15 send [21] - 125:18, 127:16, 170:14, 177:14, 177:17, 177:23, 178:5, 179:12, 179:13, 187:14, 189:2, 193:20, 194:6, 198:19, 200:8, 206:18, 211:25, 246:18, 281:6, 309:19 sends [1] - 133:9</p>	<p>sent [17] - 130:4, 130:6, 141:23, 170:15, 175:21, 177:15, 178:2, 178:3, 179:14, 181:2, 181:6, 198:22, 226:16, 226:17, 233:4, 274:23, 283:14 separate [5] - 138:2, 138:3, 183:8, 201:20, 277:5 September [5] - 118:14, 254:22, 294:7, 315:10, 317:20 set [2] - 317:11, 317:19 setup [4] - 184:2, 242:11, 242:19, 259:14 seven [3] - 143:20, 143:21, 194:6 seventy [3] - 243:12, 243:16, 267:4 seventy-five [1] - 267:4 shall [1] - 120:12 share [2] - 264:14, 271:20 SHEET [1] - 318:2 sheet [12] - 171:25, 173:10, 227:7, 228:22, 229:16, 238:8, 279:7, 279:15, 281:17, 287:24, 294:7, 316:13 sheets [11] - 238:15, 261:15, 261:16, 261:21, 261:25, 287:22, 288:4, 288:5, 288:13, 288:14, 294:4 shop [12] - 134:10, 189:24, 228:7, 228:17, 245:11, 245:12, 246:15, 267:8, 267:10, 267:19, 267:23, 284:24 Shore [1] - 217:18 short [4] - 150:4, 189:9, 197:20, 278:7 Shorthand [1] - 317:7 shovels [1] - 148:5 show [18] - 185:8, 185:9, 198:7, 205:8, 217:16, 234:16, 234:22, 235:3, 235:4, 235:21, 266:21, 278:21, 280:3, 280:18, 285:22,</p>	<p>287:3, 287:6, 291:17 showing [1] - 158:18 shows [6] - 234:4, 280:22, 282:11, 282:18, 282:21, 286:18 si [1] - 257:18 sic [1] - 298:20 side [4] - 146:7, 146:8, 146:10, 146:11 sign [16] - 176:24, 177:5, 180:9, 180:16, 258:2, 268:9, 268:10, 268:22, 268:25, 269:4, 275:21, 276:20, 276:25, 277:3, 277:7 Signed [1] - 315:20 signed [15] - 120:17, 120:19, 178:21, 178:22, 179:9, 179:20, 179:24, 180:10, 180:17, 268:12, 268:20, 276:23, 283:3, 283:8 silent [8] - 166:10, 166:12, 166:18, 203:4, 203:6, 203:11, 203:22, 204:2 silly [1] - 168:22 simple [4] - 186:3, 186:8, 186:9, 227:11 simply [1] - 167:22 sister [8] - 138:22, 139:2, 139:5, 139:8, 139:9, 149:11, 149:24, 200:21 sit [1] - 235:8 site [12] - 125:20, 132:24, 132:25, 151:16, 152:8, 153:10, 193:5, 198:8, 228:7, 228:18, 277:18, 283:15 sites [5] - 125:23, 127:12, 131:20, 145:25, 146:3 sitting [1] - 251:5 six [5] - 188:8, 194:6, 269:16, 269:18, 302:8 sixty [1] - 272:7 skinny [1] - 234:10 slick [1] - 157:25 slowly [1] - 285:15 small [1] - 148:2 smart [1] - 157:25 so-and-so [1] - 308:3 soccer [2] - 278:10, 293:14 Social [1] - 136:17</p>
--	---	---	---	---

<p>solely [1] - 218:6</p> <p>someone [8] - 173:2, 181:3, 192:6, 196:24, 213:24, 219:15, 257:11, 261:8</p> <p>someplace [1] - 239:23</p> <p>sometimes [104] - 123:13, 123:16, 127:6, 128:10, 136:7, 136:12, 136:13, 136:21, 137:24, 138:14, 138:15, 141:23, 147:18, 149:17, 151:12, 151:22, 163:23, 171:21, 173:4, 173:7, 173:8, 173:11, 174:8, 183:14, 183:15, 183:22, 183:24, 184:19, 184:20, 186:22, 187:8, 187:15, 187:18, 188:25, 189:3, 193:20, 194:5, 194:11, 194:14, 194:15, 194:18, 195:13, 195:14, 198:19, 205:3, 206:23, 211:7, 211:8, 211:13, 211:22, 211:25, 212:8, 212:15, 212:17, 212:21, 213:4, 213:7, 213:18, 214:13, 215:8, 216:8, 217:10, 217:14, 217:15, 217:16, 217:17, 226:3, 228:3, 230:18, 231:14, 231:19, 231:20, 242:24, 247:24, 250:17, 265:14, 265:25, 269:2, 269:5, 275:24, 276:16, 276:17, 277:19, 277:25, 278:2, 278:3, 289:25, 290:2, 293:4, 293:5, 293:18, 299:11, 299:17, 299:18, 301:16, 302:22, 302:23, 305:23</p> <p>somewhere [1] - 276:15</p> <p>son [6] - 143:19, 143:20, 208:9, 275:11, 275:13, 275:16</p> <p>sorry [1] - 144:23</p> <p>sort [1] - 169:2</p>	<p>space [1] - 148:4</p> <p>Spanish [9] - 119:21, 121:5, 121:6, 135:20, 175:5, 177:16, 177:18, 177:24, 229:5</p> <p>speaking [3] - 137:4, 202:24, 203:15</p> <p>specific [2] - 215:4, 276:20</p> <p>specifically [1] - 160:18</p> <p>specify [3] - 191:18, 244:22, 273:11</p> <p>spelling [1] - 176:25</p> <p>spending [1] - 146:19</p> <p>spent [3] - 153:9, 266:13, 266:17</p> <p>ss [2] - 315:5, 317:4</p> <p>stamp [2] - 275:21, 280:15</p> <p>start [20] - 133:17, 151:12, 164:13, 164:25, 165:6, 206:20, 222:21, 230:12, 230:13, 230:21, 231:8, 246:16, 249:2, 249:8, 278:14, 283:19, 285:17, 300:9, 300:10</p> <p>started [28] - 124:14, 139:13, 141:2, 145:24, 164:16, 180:21, 185:19, 222:24, 223:6, 225:6, 226:2, 231:5, 231:22, 237:24, 252:5, 253:22, 269:20, 274:12, 278:19, 281:6, 282:4, 282:18, 284:2, 285:12, 286:3, 304:22, 305:2</p> <p>starting [5] - 151:15, 195:22, 250:20, 251:18, 280:3</p> <p>starts [2] - 151:20, 163:8</p> <p>state [5] - 121:15, 121:18, 166:13, 244:4, 314:11</p> <p>State [6] - 118:22, 121:4, 121:10, 218:7, 315:25, 317:8</p> <p>STATE [2] - 315:4, 317:4</p> <p>statement [5] - 247:16, 310:21, 310:24, 311:9, 312:4</p> <p>STATES [1] - 118:2</p> <p>states [1] - 296:22</p>	<p>stating [1] - 206:19</p> <p>status [3] - 199:19, 240:12, 240:14</p> <p>stay [4] - 133:23, 191:10, 243:23, 300:2</p> <p>stayed [2] - 148:8, 259:6</p> <p>stays [1] - 266:2</p> <p>steal [4] - 132:11, 133:7, 158:13, 232:13</p> <p>stealing [2] - 132:25, 158:16</p> <p>steps [1] - 309:12</p> <p>still [5] - 127:18, 141:8, 142:5, 145:18, 284:3</p> <p>STIPULATED [3] - 120:4, 120:10, 120:15</p> <p>stole [3] - 132:21, 132:22, 256:24</p> <p>stop [16] - 128:24, 152:14, 152:16, 157:24, 159:4, 171:12, 171:19, 194:18, 194:21, 240:21, 251:14, 252:16, 283:6, 311:6</p> <p>stopped [2] - 250:21, 254:5</p> <p>stopping [1] - 296:18</p> <p>story [3] - 153:24, 223:22, 253:2</p> <p>straight [3] - 125:20, 167:6, 283:15</p> <p>street [3] - 217:17, 217:22, 284:20</p> <p>Street [1] - 121:20</p> <p>stubs [3] - 210:17, 225:12, 225:14</p> <p>stuck [1] - 168:22</p> <p>stuff [1] - 148:7</p> <p>subject [1] - 312:12</p> <p>subscribed [1] - 315:20</p> <p>substance [1] - 161:20</p> <p>substantially [1] - 156:2</p> <p>such-and-such [3] - 197:2, 197:3, 265:16</p> <p>sue [1] - 244:21</p> <p>sued [2] - 150:14, 210:10</p> <p>suffered [3] - 297:10, 297:13, 298:11</p> <p>Suffolk [27] - 139:20, 139:24, 139:25, 140:4, 140:12, 140:21, 141:20, 141:21, 150:21,</p>	<p>207:20, 238:12, 248:25, 258:25, 259:11, 262:17, 274:7, 274:8, 274:16, 274:20, 274:25, 275:3, 275:6</p> <p>SUFFOLK [2] - 118:10</p> <p>suing [21] - 122:10, 145:21, 176:9, 207:18, 207:20, 207:24, 208:3, 208:5, 213:15, 244:21, 248:10, 263:7, 266:9, 272:20, 301:12, 301:20, 302:2, 302:12, 302:15, 302:20, 307:16</p> <p>suit [3] - 180:21, 180:25, 253:12</p> <p>summer [1] - 227:25</p> <p>summertime [1] - 243:18</p> <p>Sunday [5] - 231:24, 288:16, 288:18, 302:20, 302:22</p> <p>Sundays [2] - 231:15, 231:16</p> <p>Sunrise [2] - 118:15, 119:10</p> <p>supervisor [4] - 173:8, 173:20, 174:2, 174:7</p> <p>supplements [3] - 250:7, 250:10, 250:11</p> <p>support [1] - 235:5</p> <p>supposed [21] - 123:7, 123:11, 124:6, 124:9, 124:10, 144:9, 144:15, 154:14, 154:15, 171:6, 205:24, 205:25, 206:3, 206:10, 206:24, 213:9, 213:13, 243:24, 248:6, 298:17, 303:2</p> <p>survive [1] - 263:5</p> <p>swear [1] - 282:7</p> <p>switch [1] - 299:10</p> <p>sworn [6] - 120:17, 120:20, 121:3, 121:9, 156:17, 317:12</p>	<p>tampering [1] - 235:23</p> <p>tax [5] - 289:13, 295:11, 295:15, 313:3, 313:4</p> <p>taxes [4] - 135:16, 290:13, 295:14, 297:6</p> <p>tear [1] - 226:4</p> <p>telephone [2] - 146:25, 248:20</p> <p>temperature [1] - 285:13</p> <p>ten [25] - 122:24, 122:25, 132:7, 133:25, 134:15, 134:17, 134:18, 134:20, 135:8, 144:14, 151:25, 152:8, 152:14, 183:10, 184:23, 227:12, 243:24, 263:18, 267:14, 268:9, 268:10, 272:14, 272:16, 278:4, 302:11</p> <p>tenth [2] - 247:22, 270:13</p> <p>terminated [3] - 269:13, 297:22, 298:12</p> <p>terms [1] - 143:9</p> <p>testified [8] - 121:11, 174:16, 214:5, 230:3, 232:17, 232:23, 293:13, 314:5</p> <p>testify [4] - 121:25, 122:6, 135:20, 173:25</p> <p>testifying [7] - 165:4, 165:13, 166:19, 236:15, 239:2, 239:11, 241:13</p> <p>testimony [7] - 211:10, 229:10, 235:6, 239:9, 315:9, 315:12, 317:13</p> <p>THE [10] - 144:20, 200:7, 234:19, 245:15, 245:17, 245:21, 246:4, 246:10, 246:18, 246:25</p> <p>thereafter [1] - 154:4</p> <p>therefore [1] - 241:17</p> <p>third [2] - 256:20, 279:25</p> <p>thirty [7] - 163:18, 177:11, 222:9, 222:10, 222:11, 284:25</p>
--	---	---	--	--

<p>thirty-five [3] - 222:10, 222:11</p> <p>thousand [4] - 252:2, 252:5, 252:10</p> <p>threat [1] - 310:10</p> <p>threatened [2] - 309:17, 309:18</p> <p>three [36] - 123:3, 123:5, 123:9, 132:17, 135:16, 135:17, 140:25, 141:12, 146:13, 146:17, 147:18, 148:5, 191:5, 191:23, 191:24, 201:8, 205:7, 215:9, 230:20, 237:22, 244:2, 244:20, 253:21, 256:7, 256:13, 270:6, 270:8, 271:2, 271:7, 281:4, 282:4, 284:11, 298:19, 310:20, 310:21, 310:24</p> <p>three-month [1] - 253:21</p> <p>throw [1] - 226:4</p> <p>time-and-a-half [6] - 124:16, 247:18, 292:21, 293:3, 302:25, 303:2</p> <p>tired [2] - 128:12, 229:23</p> <p>title [2] - 242:8, 242:12</p> <p>today [12] - 121:22, 121:25, 122:6, 131:15, 144:25, 148:11, 155:13, 165:5, 165:14, 166:20, 174:17, 251:5</p> <p>together [2] - 141:5, 253:21</p> <p>Tommy [25] - 171:21, 173:8, 248:18, 252:24, 253:13, 259:23, 260:4, 260:12, 260:24, 261:15, 288:5, 288:11, 306:23, 307:4, 307:7, 308:14, 308:15, 308:22, 308:23, 308:25, 312:6, 312:7</p> <p>Tommy's [2] - 261:15, 261:25</p> <p>tomorrow [3] - 200:8, 299:15, 308:2</p> <p>took [9] - 152:15, 162:21, 214:21, 232:20, 238:21,</p>	<p>238:22, 240:2, 264:8, 309:12</p> <p>tools [4] - 147:20, 147:23, 148:2</p> <p>total [3] - 122:22, 282:24, 289:10</p> <p>touch [2] - 147:24, 306:2</p> <p>touching [1] - 245:6</p> <p>Town [9] - 279:6, 279:14, 280:21, 282:7, 283:7, 283:23, 284:5, 284:13, 316:12</p> <p>town [1] - 279:12</p> <p>Town's [1] - 279:11</p> <p>track [4] - 125:22, 126:5, 198:21, 252:14</p> <p>tracked [1] - 126:14</p> <p>transcript [3] - 315:9, 315:11, 317:12</p> <p>translate [4] - 159:8, 160:14, 160:23, 200:13</p> <p>translated [1] - 121:4</p> <p>translator [1] - 160:22</p> <p>travel [18] - 142:20, 143:2, 152:3, 152:20, 153:4, 154:9, 163:3, 163:6, 163:9, 163:12, 164:4, 164:7, 164:10, 164:15, 169:20, 169:23, 170:5, 170:10</p> <p>traveling [1] - 153:10</p> <p>trial [2] - 120:13, 162:11</p> <p>TRIAL [1] - 118:18</p> <p>tried [3] - 207:3, 255:9, 309:16</p> <p>Tristate [3] - 249:7, 249:9, 249:13</p> <p>trouble [2] - 241:14, 285:7</p> <p>truck [8] - 132:18, 146:2, 147:21, 147:25, 148:9, 195:16, 278:4, 285:7</p> <p>truckload [1] - 277:12</p> <p>trucks [2] - 278:2, 283:24</p> <p>true [8] - 129:6, 160:24, 168:11, 176:15, 234:2, 315:11, 315:13, 317:13</p> <p>trust [5] - 269:2, 269:5, 269:7, 269:10, 300:19</p> <p>truth [5] - 156:17,</p>	<p>156:19, 186:10, 236:21, 289:20</p> <p>truthfully [2] - 121:25, 122:6</p> <p>try [11] - 125:4, 168:6, 168:11, 191:10, 216:13, 216:17, 235:8, 255:13, 262:24, 309:12</p> <p>trying [10] - 130:24, 132:11, 157:24, 158:13, 172:12, 172:13, 173:3, 180:5, 180:20, 180:22</p> <p>Tuesday [1] - 288:21</p> <p>TULIO [1] - 118:7</p> <p>Tulio [4] - 196:12, 196:14, 196:15, 196:19</p> <p>Tulio's [1] - 295:7</p> <p>turn [11] - 127:17, 127:21, 225:16, 226:6, 238:3, 279:22, 280:10, 280:15, 282:13, 285:19, 286:23</p> <p>turned [10] - 126:20, 126:21, 126:22, 127:19, 226:14, 234:4, 234:5, 234:9, 234:20, 273:6</p> <p>twelve [5] - 215:17, 215:20, 215:22, 273:7, 273:9</p> <p>twenty [3] - 154:20, 163:17, 201:16</p> <p>twice [8] - 190:9, 278:12, 278:17, 293:21, 293:22, 294:25, 299:20</p> <p>two [55] - 122:4, 123:2, 123:4, 124:13, 132:17, 134:5, 134:10, 134:14, 142:4, 147:8, 148:5, 149:17, 163:23, 172:22, 172:24, 182:24, 184:4, 191:13, 197:24, 200:20, 205:7, 205:9, 205:10, 205:20, 205:21, 205:22, 206:4, 227:13, 230:17, 230:19, 243:23, 244:14, 252:10, 254:5, 256:13, 263:12, 263:13, 271:2, 273:17, 274:22,</p>	<p>277:20, 277:23, 281:4, 282:3, 285:3, 294:25, 295:6, 295:7, 296:23, 300:3, 301:18, 302:10, 303:6, 303:21</p> <p>two-and-a-half [4] - 205:9, 205:10, 205:22, 206:4</p> <p>U</p> <p>unable [2] - 157:5, 165:22</p> <p>under [6] - 121:6, 156:14, 248:10, 274:13, 314:15, 315:10</p> <p>understood [1] - 157:12</p> <p>unemployed [1] - 304:2</p> <p>unemployment [4] - 304:3, 304:12, 304:19, 305:6</p> <p>union [51] - 124:12, 139:24, 139:25, 142:19, 142:21, 142:25, 143:6, 143:8, 143:15, 170:4, 170:9, 174:20, 205:18, 205:19, 206:9, 206:12, 207:4, 211:24, 213:8, 213:9, 213:11, 213:14, 213:19, 213:23, 214:6, 214:8, 214:10, 214:16, 215:12, 219:24, 222:20, 222:24, 223:7, 223:13, 223:20, 236:19, 242:16, 242:17, 242:24, 249:16, 249:19, 249:23, 252:5, 252:9, 274:11, 274:12, 292:15, 292:21, 314:6, 314:8</p> <p>unit [1] - 292:2</p> <p>UNITED [1] - 118:2</p> <p>units [1] - 129:8</p> <p>unless [2] - 257:21, 300:11</p> <p>unnecessarily [1] - 172:15</p> <p>up [33] - 124:12, 126:20, 126:21, 126:22, 127:17, 128:11, 130:5, 130:6, 133:10, 134:5,</p>	<p>136:21, 147:3, 147:11, 147:14, 147:18, 148:7, 149:25, 170:12, 171:25, 173:19, 198:7, 198:25, 200:14, 214:11, 217:16, 224:17, 226:5, 234:8, 234:20, 283:19, 283:22, 294:10, 300:3</p> <p>upset [1] - 155:3</p> <p>utilized [2] - 264:11, 301:14</p> <p>V</p> <p>vacation [1] - 215:8</p> <p>Vecchia [55] - 119:22, 148:12, 148:14, 150:20, 151:23, 154:14, 158:11, 158:14, 158:17, 171:21, 174:9, 176:9, 176:22, 179:3, 183:25, 185:17, 189:2, 207:15, 207:19, 207:22, 207:23, 207:25, 208:11, 208:13, 208:15, 209:13, 209:16, 209:20, 210:3, 213:8, 217:21, 225:13, 233:7, 252:21, 256:25, 257:6, 257:13, 260:5, 260:10, 260:25, 261:5, 261:11, 266:9, 275:4, 275:7, 294:4, 299:14, 301:3, 301:13, 308:7, 309:5, 311:24</p> <p>VECCHIA [12] - 118:11, 118:11, 245:10, 245:16, 245:20, 246:3, 246:8, 246:12, 273:23, 283:5, 283:9</p> <p>Vecchia's [1] - 181:6</p> <p>Vega [2] - 197:5, 197:8</p> <p>VEGA [1] - 118:7</p> <p>vehicle [4] - 126:14, 146:21, 146:24, 256:4</p> <p>Victor [2] - 196:3, 271:18</p> <p>violation [1] - 235:24</p> <p>voice [1] - 155:3</p>
--	--	--	---	--

<p>W</p> <p>wage [29] - 213:6, 213:12, 213:17, 213:20, 213:22, 216:5, 216:11, 217:2, 217:9, 217:13, 217:20, 217:23, 218:2, 218:4, 218:6, 219:16, 220:3, 220:14, 220:16, 221:8, 221:16, 248:7, 249:24, 250:3, 250:6, 250:10, 268:15, 296:13</p> <p>wages [3] - 213:10, 242:21, 243:4</p> <p>wait [2] - 278:3, 279:2</p> <p>waited [1] - 288:10</p> <p>waiting [1] - 169:8</p> <p>waived [1] - 120:8</p> <p>waiving [1] - 154:3</p> <p>wake [1] - 198:25</p> <p>WALLACE [255] - 119:4, 119:6, 123:6, 123:23, 124:23, 125:11, 126:16, 127:14, 128:3, 128:20, 129:4, 129:9, 129:12, 129:17, 129:23, 130:19, 131:22, 132:4, 132:13, 133:3, 134:6, 134:12, 136:20, 137:15, 137:19, 143:4, 143:11, 143:17, 148:17, 150:3, 150:12, 151:17, 152:4, 152:21, 153:5, 153:11, 154:5, 155:19, 155:21, 156:11, 157:4, 158:2, 158:6, 158:19, 158:25, 159:8, 159:14, 159:23, 160:13, 160:21, 161:4, 161:11, 161:14, 161:17, 161:25, 162:3, 162:8, 162:13, 162:18, 162:24, 165:11, 165:16, 166:2, 166:8, 166:13, 167:12, 167:21, 168:3, 168:5, 168:21, 169:2, 169:10, 169:17, 169:24, 170:16, 172:4, 172:18,</p>	<p>173:22, 174:18, 176:4, 176:16, 176:20, 177:25, 178:12, 178:16, 178:18, 180:5, 181:19, 182:8, 182:13, 183:16, 184:9, 184:22, 185:11, 187:13, 192:17, 193:12, 198:4, 198:9, 199:3, 199:17, 199:23, 200:4, 200:10, 201:24, 202:5, 202:10, 202:15, 202:19, 202:25, 203:5, 203:8, 203:13, 203:18, 203:23, 204:3, 205:15, 206:17, 207:10, 207:12, 208:19, 208:23, 209:17, 209:22, 210:4, 210:15, 212:4, 212:14, 212:23, 214:12, 216:6, 216:19, 217:4, 220:17, 221:9, 227:4, 227:9, 227:24, 228:8, 228:23, 229:4, 229:17, 232:3, 232:14, 233:16, 233:25, 234:17, 234:21, 234:24, 235:16, 235:21, 235:25, 236:7, 236:13, 236:22, 237:2, 237:6, 237:12, 237:17, 239:4, 239:8, 239:16, 239:19, 240:10, 240:21, 240:23, 241:4, 241:8, 241:22, 241:25, 242:5, 242:22, 243:5, 244:23, 247:4, 247:8, 247:15, 247:20, 250:14, 251:8, 252:3, 253:9, 253:19, 254:7, 255:7, 255:14, 255:25, 256:9, 257:2, 258:22, 260:6, 261:12, 261:17, 262:3, 262:8, 262:21, 263:8, 263:22, 264:9, 265:5, 265:22, 266:6, 266:11, 267:16, 269:15, 270:12, 270:19, 271:13, 272:2, 272:11, 272:22, 272:24, 273:4, 273:24,</p>	<p>275:18, 276:2, 276:12, 279:2, 281:15, 281:21, 282:9, 284:7, 286:21, 288:7, 288:25, 289:15, 290:15, 292:4, 292:8, 292:12, 293:10, 293:15, 293:19, 297:12, 297:25, 298:14, 301:6, 302:4, 302:17, 305:14, 306:15, 307:9, 308:11, 309:14, 310:17, 311:2, 311:8, 311:19, 312:23, 313:11, 313:15, 313:19, 313:23, 314:4, 314:11</p> <p>Wallace [6] - 134:4, 134:9, 161:23, 175:25, 176:2, 226:20</p> <p>Wallace's [1] - 209:3</p> <p>Walter [5] - 188:22, 188:24, 189:5, 189:9, 196:3</p> <p>WALTER [1] - 118:5</p> <p>wants [5] - 148:18, 265:7, 291:2, 301:8, 313:4</p> <p>warm [1] - 308:19</p> <p>warning [2] - 159:20, 228:25</p> <p>waste [2] - 169:11, 178:18</p> <p>watched [1] - 283:9</p> <p>water [2] - 198:20, 218:7</p> <p>weather [4] - 198:14, 198:17, 198:23, 227:25</p> <p>Wednesday [4] - 149:16, 288:20, 288:21, 288:22</p> <p>week [19] - 123:12, 150:16, 201:6, 205:23, 206:5, 211:13, 212:13, 227:23, 230:18, 243:13, 243:17, 250:25, 251:7, 269:25, 270:3, 271:2, 272:7, 288:20, 288:22</p> <p>weekly [1] - 123:19</p> <p>weeks [14] - 138:17, 201:8, 230:17, 231:7, 231:11, 251:24, 270:4, 270:8, 271:2, 273:17, 310:20, 310:21, 310:24</p> <p>welcome [1] - 135:13</p>	<p>wheelbarrow [1] - 148:4</p> <p>WHEREOF [1] - 317:19</p> <p>whole [7] - 173:18, 211:18, 212:11, 214:18, 215:18, 215:23, 277:12</p> <p>wife [8] - 208:5, 208:17, 209:12, 209:15, 209:19, 209:24, 246:24, 264:15</p> <p>wish [1] - 318:3</p> <p>witness [14] - 121:8, 159:3, 160:22, 160:25, 161:5, 165:12, 166:14, 235:22, 242:7, 312:21, 313:16, 314:14, 317:10, 317:14</p> <p>WITNESS [12] - 144:20, 200:7, 234:19, 245:15, 245:17, 245:21, 246:4, 246:10, 246:18, 246:25, 316:4, 317:19</p> <p>word [7] - 229:22, 237:7, 242:2, 250:11, 269:3, 294:9, 305:11</p> <p>words [2] - 167:19, 269:6</p> <p>worker [6] - 128:7, 147:7, 147:11, 275:11, 275:13, 307:22</p> <p>workers [10] - 128:23, 170:13, 185:17, 186:14, 233:18, 289:19, 289:24, 294:20, 295:2, 295:3</p> <p>works [9] - 137:21, 138:7, 139:11, 139:19, 164:21, 213:24, 218:6, 275:11, 294:22</p> <p>workshop [1] - 171:6</p> <p>worksite [5] - 125:10, 125:17, 171:7, 186:16, 190:3</p> <p>worksites [2] - 129:15, 129:21</p> <p>worried [2] - 128:16, 193:7</p> <p>worries [1] - 149:14</p> <p>worry [3] - 199:6, 258:6, 258:12</p>	<p>worth [4] - 161:25, 222:16, 263:10, 293:9</p> <p>wound [1] - 214:11</p> <p>write [8] - 126:11, 133:21, 164:22, 167:7, 167:8, 175:10, 238:7, 265:19</p> <p>written [3] - 134:21, 135:8, 210:17</p> <p>wrote [2] - 238:14, 305:20</p> <p>Y</p> <p>yard [44] - 125:15, 126:11, 126:22, 127:7, 132:17, 133:19, 133:23, 134:4, 144:4, 147:11, 152:10, 152:25, 163:8, 163:20, 163:21, 164:24, 165:2, 165:6, 165:14, 167:2, 167:5, 168:14, 168:20, 170:13, 170:18, 170:19, 171:24, 185:21, 186:2, 186:18, 187:7, 187:11, 190:4, 196:24, 197:3, 238:6, 281:5, 281:9, 283:25, 284:8, 285:6, 286:17, 287:13</p> <p>year [67] - 124:7, 124:12, 139:13, 141:2, 141:7, 141:10, 141:17, 142:14, 143:24, 145:24, 146:16, 146:17, 151:18, 191:2, 191:19, 200:22, 201:4, 201:11, 201:12, 201:20, 214:18, 215:19, 215:23, 219:20, 219:21, 222:21, 223:19, 223:21, 225:4, 225:5, 225:9, 228:2, 230:6, 230:9, 231:4, 231:10, 243:20, 244:13, 250:13, 252:2, 252:7, 258:14, 258:18, 258:20, 259:17, 259:20, 272:15, 272:17, 278:16, 278:17, 281:6, 282:3, 295:12, 295:16, 295:18, 295:20, 295:22, 295:24,</p>
--	---	--	---	---

<p>296:2, 296:4, 296:6, 296:23, 297:4, 298:20, 299:8, 304:4 years [23] - 136:9, 191:5, 191:16, 191:24, 197:24, 200:20, 201:16, 205:7, 205:20, 225:24, 225:25, 226:3, 243:21, 244:14, 244:20, 248:23, 252:8, 252:11, 273:18, 300:3, 303:6 years-and- something [1] - 303:6 yells [1] - 145:11 yes-or-no [2] - 162:24, 167:15 yesterday [2] - 244:13, 244:16 YORK [3] - 118:2, 315:4, 317:4 York [10] - 118:16, 118:23, 119:5, 119:10, 121:4, 121:11, 121:21, 315:25, 317:9 yourself [4] - 168:7, 179:17, 194:21, 266:18</p>	<p>287:18, 289:17, 312:12, 313:9, 313:12, 313:17, 313:20, 313:25, 314:9, 314:16 zip [1] - 270:14</p>
Z	
<p>Zabell [4] - 208:24, 235:4, 314:12, 316:7 ZABELL [63] - 119:9, 119:11, 121:14, 159:10, 159:16, 160:24, 161:7, 161:16, 161:22, 162:2, 162:5, 162:9, 162:15, 166:17, 168:24, 169:5, 171:16, 172:2, 172:5, 178:14, 178:17, 199:20, 199:25, 200:14, 202:3, 202:8, 202:13, 202:17, 202:23, 203:3, 203:7, 203:10, 203:15, 203:21, 203:25, 208:21, 209:2, 220:9, 228:24, 229:6, 234:22, 240:13, 240:25, 241:6, 241:11, 241:23, 242:3, 245:8, 245:13, 246:22, 247:13, 270:14, 279:4,</p>	